

United States  
**Circuit Court of Appeals**  
 For the Ninth Circuit.

I. F. SEARLE, MINNIE A. GIBBS and MERRILL  
 COX & COMPANY, Creditors of the Estate of  
 Stack-Gibbs Lumber Company, Bankrupt,  
*Appellants*

vs.

MECHANICS LOAN & TRUST COMPANY and  
 EXCHANGE NATIONAL BANK OF SPO-  
 KANE, WASHINGTON, Creditors of the Estate  
 of Stack-Gibbs Lumber Company, Bankrupt,  
*Appellees.*

IN THE MATTER OF STACK-GIBBS LUMBER  
 COMPANY, a Corporation,  
Bankrupt.

**Transcript of the Record**

FILED

JAN 5 - 1918

F. D. MONCKTON,

*Upon Appeal from the United States District Court  
 for the District of Idaho, Northern Division*



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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I. F. SEARLE, MINNIE A. GIBBS and MERRILL  
COX & COMPANY, Creditors of the Estate of  
Stack-Gibbs Lumber Company, Bankrupt,  
*Appellants*

vs.

MECHANICS LOAN & TRUST COMPANY and  
EXCHANGE NATIONAL BANK OF SPÓ-  
KANE, WASHINGTON, Creditors of the Estate  
of Stack-Gibbs Lumber Company, Bankrupt,  
*Appellees.*

IN THE MATTER OF STACK-GIBBS LUMBER  
COMPANY, a Corporation,  
Bankrupt.

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**Transcript of the Record**

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*Upon Appeal from the United States District Court  
for the District of Idaho, Northern Division*

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*In the District Court of the United States for the  
District of Idaho, Northern Division.*

IN THE MATTER OF THE STACK-GIBBS LUM-  
BER COMPANY, a Corporation,  
Bankrupt.

No. 905

AMENDED PROOF OF CLAIM OF MECHANICS  
LOAN AND TRUST COMPANY, A  
CORPORATION

At Spokane, Washington, in the County of Spo-  
kane, on the 5th day of January, A. D. 1917, came  
J. V. Rea, of Spokane, Washington, and made oath  
and says that he is the manager and secretary of  
the Mechanics Loan & Trust Company, a corpora-  
tion organized and existing under and by virtue of  
the laws of the State of Washington and having its  
principal place of business at Spokane, Washington;  
that he is duly authorized by said corporation to  
make this proof of claim in the above entitled cause  
and court for and on behalf of said Mechanics Loan  
& Trust Company, the said corporation having no  
treasurer, and affiant occupying the position most  
nearly like that of treasurer with said corporation.

Affiant further says that the Stack-Gibbs Lumber  
Company, a corporation, against which a petition  
for adjudication of bankruptcy was filed in the above  
entitled court and cause on July 29, 1916, was at  
and before the filing of said petition, and still is,  
justly and truly indebted to this corporation in the  
sum of \$101,162.91. The consideration for said debt  
is as follows: That on or about February 1, 1916,



the said Stack-Gibbs Lumber Company, a corporation, was operating the lumber mill at Gibbs, Idaho, and was also engaged in the business of logging and manufacturing of lumber and allied products, and other business relating thereto. That it was represented that the said lumber company and also the Dryad Lumber Company, a corporation, by C. D. Gibbs, an officer and trustee of each corporation at said time, that the assets of the said companies greatly exceeded the indebtedness but that they were unable to obtain means to pay the indebtedness due and presently to become due, and it was agreed by the said Stack-Gibbs Lumber Company, a corporation, the Dryad Lumber Company, a corporation, C. D. Gibbs and Mechanics Loan & Trust Company, a corporation, that a plan be adopted for realizing upon the property of the lumber company and the mill company and securing money to pay their presently due indebtedness and for satisfying their indebtedness, and the said parties entered into the agreement which is hereto attached and made a part of this proof of claim, marked "Exhibit A," and the said agreement was also signed by Merrill, Cox & Company, a corporation, Fort Dearborn National Bank, a corporation, I. F. Searle, First National Bank of Lincoln, Nebraska, a corporation, Exchange National Bank of Spokane, a corporation, Shoshone Lumber Company, a corporation, Idaho Timber Company, a corporation, S. H. Hess, J. K. Stack, Genevieve Hess Tolerton and Mrs. M. A. Gibbs, all of said parties consenting to and acquiescing in the plan outlined in said agreement mentioned above.



It was provided in said instrument, in paragraph 2 thereof of the conditions, that the Mechanics Loan & Trust Company, as trustee, might in its discretion but should not be required to carry on the whole or any part of said business theretofore conducted by said lumber company and said mill company.

It was further provided in Section 10 of said conditions set forth in said Exhibit A that the trustee namely, the Mechanics Loan & Trust Company, a corporation, should advance such sums of money as it should deem necessary to meet the then present payroll of the lumber company and the mill company and to discharge the claims of creditors who did not execute the instrument, as it was deemed necessary and requisite to protect the trust company, not to exceed the sum of \$100,000, and that the trustee, namely, the Mechanics Loan & Trust Company, a corporation, should have a first and preference claim upon said trust estate for the amount of such advancements, and the same should be repaid to it out of the first proceeds of sale of the trust property or any part thereof or the first proceeds of any of the collected accounts or bills receivable, together with interest thereon from the date of such advancements at the rate of 6% per annum.

It was further provided in said instrument marked "Exhibit A" that the proceeds of the trust estate, after reimbursing the trustee for advancements, expenses, compensation and other claims mentioned therein, should be distributed pro rata among the creditors of the lumber company and the mill company.

Pursuant to said plan and agreement, between the dates of February 9, 1916, and May 11, 1916, the said Mechanics Loan & Trust Company, a corporation, did advance to the said Stack-Gibbs Lumber Company, a corporation, for the purposes set forth in said instrument marked "Exhibit A" hereto attached, the sum of \$100,000, which amount was evidenced by notes executed by the Stack-Gibbs Lumber Company, a corporation, and made payable to the order of the Mechanics Loan & Trust Company, a corporation, which said notes and each of them drew interest at the rate of 6% per annum from date and were made payable ninety days after date; that as the said notes became due they were not paid but were renewed by the Stack-Gibbs Lumber Company, a corporation, a list of which said renewal notes is as follows:

8 notes for \$5,000 each, dated May 9, 1916, due 90 days after date, with interest on each of said notes from May 9, 1916, to date of filing the petition, amounting to \$67.51, which notes are hereto attached and made a part hereof, marked Exhibits "B" to "I" inclusive.

1 note for \$2,500, dated May 11, 1916, with interest thereon from date until July 29, 1916, amounting to \$32.93, which note is hereto attached and made a part hereof, marked Exhibit "J."

2 notes for \$2,500 each, dated May 11, 1916, payable to the Exchange National Bank of Spokane on demand, which notes are hereto attached and made a part hereof, marked Exhibits "K"

and "L", and which said notes were given by the said Stack-Gibbs Lumber Company to take the place and stead of notes for the same amounts made payable to the Mechanics Loan & Trust Company, the said original notes being placed in the hands of the Exchange National Bank of Spokane for the purpose of collection, and through inadvertence and mistake the said bank took the renewal notes on the bank's form of promissory notes and each of said notes was endorsed by the Mechanics Loan & Trust Company.

4 notes for \$5,000 each, dated May 16, 1916, payable 90 days after date, which notes are hereto attached and made a part hereof, marked Exhibits "M" to "P" inclusive, and said notes being made out on the form of note running to the Exchange National Bank of Spokane. These notes were renewals of notes running to the Mechanics Loan & Trust Company which had been placed in the hands of the Exchange National Bank of Spokane for the purpose of collection, and said renewal notes were inadvertently made out on the form of note running to the Exchange National Bank of Spokane, and each of said notes was endorsed by the Mechanics Loan & Trust Company.

1 note for \$5,000, dated May 24, 1916, payable 90 days after date, which is hereto attached and made a part hereof, marked Exhibit "Q".

1 note for \$5,000, dated May 26, 1916, payable

90 days after date, which is hereto attached and made a part hereof, marked Exhibit "R".

1 note for \$5,000, dated June 5, 1916, payable 90 days after date, which is hereto attached and made a part hereof, marked Exhibit "S".

1 note for \$5,000, dated June 6, 1916, payable 90 days after date, which is hereto attached and made a part hereof, marked Exhibit "T".

1 note for \$5,000, dated June 8, 1916, payable 90 days after date, which is hereto attached and made a part hereof, marked Exhibit "U".

1 note for \$2,500, dated June 13, 1916, payable 90 days after date, which is hereto attached and made a part hereof, marked Exhibit "V".

1 note for \$5,000, dated July 7, 1916, payable 90 days after date, which is hereto attached and made a part hereof, marked Exhibit "W".

That each of said notes drew interest at the rate of 6% per annum from their respective dates, and the total amount of interest due on the total number of notes herein mentioned, on July 29, 1916, was \$1162.91, making a total amount due and payable to the said Mechanics Loan & Trust Company on account of money advanced as aforesaid in the sum of \$101,162.91, which amount remains unpaid and due. That no part of said debt has been paid and there are no set-offs or counter-claims to the same. That the Mechanics Loan & Trust Company, a corporation, has not, nor has any one by its order, to its knowledge or belief, had or received any manner of security for said debt whatever, except as herein set forth,

and in addition to what has been mentioned heretofore. Those notes marked Exhibits "B" to "I" inclusive are endorsed by C. D. Gibbs, and those notes marked Exhibits "S", "T" and "U" are endorsed by the said C. D. Gibbs. That no judgment has been rendered on said claim.

Claimant further alleges that but for the agreement entered into as hereinbefore stated and as evidenced by a written contract hereto attached and marked "Exhibit A" as a part of this claim, and the signing of the same by the persons and corporations mentioned herein, claimant would not have advanced the said sum of \$100,000, upon which, with interest, this claim is based, and claimant claims a lien on all of the property of every kind and character belonging to the said Stack-Gibbs Lumber Company, a corporation, as set forth in contract "Exhibit A," or in lieu thereof, the money now in the hands of the Trustee in Bankruptcy which was derived from the sale of any of such property, and claimant is entitled to have the said property or the money representing the same applied to the satisfaction of this claim, and is also entitled to have applied to the payment of this claim any and all dividends or sums that may be found by this court to become due and payable from this estate to Merrill, Cox & Company, Fort Dearborn National Bank, a corporation, I. F. Searle, First National Bank of Lincoln, Nebraska, Exchange National Bank of Spokane, Washington, a corporation, Shoshone Lumber Company, a corporation, Idaho Timber Company, a corporation, S. H. Hess,



J. K. Stack, Genevieve Hess Tolerton and Mrs. M. A. Gibbs, until the full amount of advancements and interest at the rate of 6% per annum as hereinabove set forth be paid to the said claimant herein; and in event that the claim of claimant herein to a lien upon all of the properties and moneys of the said Stack-Gibbs Lumber Company, a corporation, a bankrupt, be denied, then and in that event the said claimant is entitled to have any and all dividends or sums that may be found by this court to become due and payable to the persons and corporations hereinabove particularly mentioned as signing said agreement until the full amount of advancements as hereinabove set forth, together with interest at 6% per annum, be paid to the claimant herein, and before any moneys whatsoever from said estate are applied in liquidation and satisfaction of any of the indebtedness of the above named creditors.

(Seal)

J. W. REA,

Manager and Secretary of Mechanics Loan & Trust Company, a corporation, Claimant.

Subscribed and sworn to before me this 5th day of January, A. D. 1917.

(Seal)

A. E. RUSSELL,

Notary Public in and for the State of Washington, residing at Spokane.

(Endorsed): Filed January 6, 1917. L. L. Lewis, Referee.

(Title of Court and Cause.)

No. 905

TRUSTEE'S OBJECTIONS TO ALLOWANCE  
OF CLAIM OF MECHANICS LOAN &  
TRUST CO.

Your petitioner respectfully shows:

That he is a trustee herein, duly qualified and acting;

That a proof of debt of Mechanics Loan & Trust Company, claiming to be a creditor of the said Stack-Gibbs Lumber Company, a corporation, was filed herein on the 6th day of January, 1917.

That the same should not be allowed for the following reasons:

1. Object that this court has no jurisdiction in this proceeding, or at all to hear or determine the rights of the said claimant, the Mechanics Loan & Trust Company, to any dividend or dividends to be hereafter declared upon the claim of these objectors, or either of them, or of any other creditors of the bankrupt, or to determine any rights whatsoever to the said dividends to be declared herein as between the said claimant and these objectors.

2. That the said claimant is not the owner of the notes declared upon in said petition.

3. That the said claimant, Mechanics Loan & Trust Company, a corporation, did not loan, advance or furnish to the above named bankrupt any sum of money whatsoever, or at all.

4. That the said alleged contract referred to in the proof of claim of said Mechanics Loan & Trust Company, against said bankrupt and attached to the

said claim as Exhibit "A" thereof, was not executed by these objectors nor by the said Mechanics Loan & Trust Company, nor by any person whomsoever.

5. That the said alleged contract attached to the proof of claim of the Mechanics Loan & Trust Company as Exhibit "A" to said claim was never signed by ninety per cent, in amount of the indebtedness of the said bankrupt, and that ninety (90) per cent of the creditors did not attach their signatures to said alleged contract, and said alleged contract never became operative by reason of the failure to acquire the signatures of said ninety (90) per cent, in amount, of said creditors.

6. That said Mechanics Loan & Trust Company, being then the holders of the trust deed on the property of the Dryad Lumber Company, did not extend said trust deed for a period of two years from the first day of February, 1916, or for any period whatsoever, or at all.

7. That the said claimant, the Mechanics Loan & Trust Company, a corporation, did not advance the sum of One Hundred Thousand Dollars, or any part thereof to the said bankrupt by, upon, or under the terms of said alleged contract set out as Exhibit "A" and attached to the proof of claim of said Mechanics Loan & Trust Company, or in any other manner, or at all, and the said Mechanics Loan & Trust Company, a corporation, did not take possession of the property mentioned in said alleged contract or perform any other act under or by virtue of said alleged contract.

8. That the said claimant, the Mechanics Loan



& Trust Company, contrary to the provisions of the said alleged contracts set out, contained in and attached to its said claim as Exhibit "A" thereof, participated in and caused the bankruptcy proceedings herein to be instituted against the bankrupt.

9. Said claimant negligently collected the debts or obligations of said company.

10. Said claimant has been guilty of gross neglect of the trust imposed on it in said contract.

11. That the signers of said agreement are not bound by said agreement by reason of the false and fraudulent representations made to them by C. D. Gibbs, Stack-Gibbs Lumber Company and the Dryad Lumber Company.

12. That said claimant is not authorized and has no authority under the laws of the State of Idaho to contract or act as it alleges in its said petition, and in said alleged contract referred to therein.

13. That said claimant is not entitled to maintain its said petition for the reason that it has not complied with the requirements of the statutes of the State of Idaho with reference to conducting business in said State.

WHEREFORE, your petitioner prays that said claim be rejected and be not allowed.

W. A. ARMSTRONG,  
Petitioner.

State of Idaho,  
County of Kootenai,—ss.

W. A. Armstrong being first duly sworn, deposes and says: That he is the duly appointed, qualified and acting Trustee in Bankruptcy of the above

bankrupt; that he has read the above petition, knows the contents thereof, and that the same is true as he verily believes.

W. A. ARMSTRONG.

Subscribed and sworn to before me this 6th day of January, 1917.

LAWRENCE. L. LEWIS,  
Referee.

(Endorsed) : Filed January 6, 1917. L. L. Lewis,  
Referee.

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(Title of Court and Cause.)

No. 905.

OBJECTIONS OF MERRILL COX & CO. ET AL.  
TO ALLOWANCE OF CLAIM OF MECHAN-  
ICS LOAN & TRUST CO.

To L. L. Lewis, Referee in Bankruptcy:

Your petitioners, Merrill Cox & Co., Fort Dearborn National Bank, S. H. Hess, I. F. Searle, Mamie A. Gibbs and Genevieve Hess Tolerton, respectfully show:

That they are creditors in the above entitled cause and have duly filed their claims herein.

That the claimant hereinafter referred to is claiming a preference as to your petitioners as more particularly hereinafter set forth.

That a proof of debt of Mechanics Loan & Trust Company, claiming to be a creditor of the said Stack-Gibbs Lumber Company, a corporation, was filed herein on the 6th day of January, 1917.

That the same should not be allowed for the following reasons:

1. Object that this court has no jurisdiction in this proceeding or at all to hear or determine the rights of the said claimant, the Mechanics Loan & Trust Company, to any dividend or dividends to be hereafter declared upon the claim of these objectors, or either of them, or of any other creditors of the bankrupt, or to determine any rights whatsoever to the said dividends to be declared herein as between the said claimant and these objectors.

2. That the said claimant is not the owner of the notes declared upon in said petition.

3. That the said claimant, Mechanics Loan & Trust Company, a corporation, did not loan, advance or furnish to the above named bankrupt any sum of money whatsoever, or at all.

4. That the said alleged contract referred to in the proof of claim of said Mechanics Loan & Trust Company, against said bankrupt and attached to the said claim as Exhibit A thereof, was not executed by these objectors not by the said Mechanics Loan & Trust Company, nor by any person whomsoever.

5. That the said alleged contract attached to the proof of claim of the Mechanics Loan & Trust Company as Exhibit A to said claim was never signed by ninety (90) per cent, in amount of the indebtedness of the said bankrupt, and that ninety (90) per cent of the creditors did not attach their signatures to said alleged contract, and said alleged contract never became operative by reason of the failure to acquire the signatures of said ninety (90) per cent, in amount of said creditors.

6. That said Mechanics Loan & Trust Company, being then the holders of the trust deed on the property of the Dryad Lumber Company, did not extend said trust deed for a period of two years from the first day of February, 1916, or for any period whatsoever or at all.

7. That the said claimant, the Mechanics Loan & Trust Company, a corporation, did not advance the sum of One Hundred Thousand Dollars, or any part thereof, to the said bankrupt by, upon or under the terms of said alleged contract set out as Exhibit A and attached to the proof of claim of said Mechanics Loan & Trust Company, or in any other manner, or at all, and the said Mechanics Loan & Trust Company, a corporation, did not take possession of the property mentioned in said alleged contract or perform any other act under or by virtue of said alleged contract.

8. That the said claimant, the Mechanics Loan & Trust Company, contrary to the provisions of the said alleged contracts set out, contained in and attached to its said claim as Exhibit A thereof, participated in and caused the bankruptcy proceedings herein to be instituted against the bankrupt.

9. Said claimant negligently collected the debts or obligations of said company.

10. Said claimant has been guilty of gross neglect of the trust imposed on it in said contract.

11. That the signers of said agreement are not bound by said agreement by reason of the false and fraudulent representations made to them by C. D.

Gibbs, Stack-Gibbs Lumber Company and the Dryad Lumber Company.

12. That said claimant is not authorized and has no authority under the laws of the State of Idaho to contract or act as it alleges in its said petition, and in said alleged contract referred to therein.

13. That said claimant is not entitled to maintain its said position for the reason that it has not complied with the requirements of the statutes of the State of Idaho with reference to conducting business in said State.

WHEREFORE, your petitioner prays that said claim be rejected and be not allowed.

I. F. SEARLES and MAMIE A. GIBBS,

Claimants, by H. W. Canfield, Attorney.

FORT DEARBORN NATIONAL BANK,  
MERRILL COX & CO.,

By Elmer H. Adams, Their Attorney.

S. H. HESS and GENEVIEVE HESS

TOLERTON,

By Danson, Williams & Danson, Their Attorneys.

*Petitioners.*

State of Idaho,

County of Kootenai,—ss.

Elmer H. Adams, being first duly sworn, deposes and says: That he is the duly appointed, qualified and acting agent for Merrill Cox & Co., claimants of the above bankrupt; that he has read the above petition, knows the contents thereof and that the same is true as he verily believes.

ELMER H. ADAMS.

Subscribed and sworn to before me this 6th day of January, 1917.

(Signed) LAWRENCE L. LEWIS.

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(Title of Court and Cause.)

No. 905.

PETITION OF EXCHANGE NATIONAL BANK  
OF SPOKANE, WASHINGTON.

Comes now the Exchange National Bank of Spokane, Washington, and petitions the above entitled court and represents as follows:

1. That at all the times herein mentioned the Exchange National Bank of Spokane was and now is a national bank organized under the laws of the United States relating to national banks.

2. That at all the times mentioned herein the Mechanics Loan & Trust Company was and now is a corporation organized and existing under and by virtue of the laws of the State of Washington and is authorized to do business under the laws of the State of Idaho relating to foreign corporations.

3. Your petitioner represents that on or about February 1, 1916, the Stack-Gibbs Lumber Company was a corporation operating a lumber mill at Gibbs, Idaho, and was also engaged in the business of logging and manufacturing lumber and allied products and other business relating thereto. That on or about the said date it was represented that the said Stack-Gibbs Lumber Company and also the Dryad Lumber Company, a corporation, by C. D. Gibbs, an officer and trustee and representative of each of said companies at said time, that the assets



of said companies greatly exceeded the indebtedness of the said companies but that they were unable to obtain money to pay the indebtedness due and then presently to become due, and it was agreed by the said Stack-Gibbs Lumber Company, a corporation, the Dryad Lumber Company, a corporation, C. D. Gibbs and Mechanics Loan & Trust Company, a corporation, that a plan be adopted for realizing upon the property of the lumber company and the mill company and for securing the money to pay their then due indebtedness and for satisfying their then due indebtedness, and the said parties entered into an agreement, which said agreement is attached to the claim of the Mechanics Loan & Trust Company heretofore filed herein and referred to as part of this petition. Said agreement was marked "Exhibit A" on the claim of said Mechanics Loan & Trust Company and such agreement was also signed by Merrill, Cox & Company, a corporation, Fort Dearborn National Bank, a corporation, I. F. Searle, First National Bank of Lincoln, Nebraska, a corporation, Exchange National Bank of Spokane, a corporation, Shoshone Lumber Company, a corporation, Idaho Timber Company, a corporation, S. H. Hess, J. K. Stack, Genevieve Hess Tolerton and Mrs. M. A. Gibbs, all of said parties consenting to and acquiescing in the plan outlined in said agreement mentioned above, a true copy of which said agreement is hereto attached and marked "Exhibit A."

4. It was further provided in said instrument, in paragraph 2 thereof, that the Mechanics Loan &

Trust Company, as trustee, might in its discretion, but should not be required to, carry on the whole or any part of said business theretofore conducted by the said lumber company, and the said mill company.

5. And it was further provided in section 10 of the conditions of said instrument that the trustee, viz., Mechanics Loan & Trust Company, a corporation, should advance such sums of money as it should deem necessary to meet the then due payroll of the said lumber company and the said mill company, and to discharge the claims of creditors who did not execute the said instrument, as it was deemed necessary and requisite to protect the Trust Company, not to exceed the sum of \$100,000, and that the said trustee, viz., the Mechanics Loan & Trust Company, a corporation, should have a first and preference claim upon said trust estate for the amount of such advancements and the same should be repaid to it out of the first proceeds of the sale of the trust property or any part thereof or the first proceeds of any of the collected accounts or bills receivable, together with interest thereon from the date of such advancement at the rate of six per cent. per annum.

It was further provided in said instrument marked "Exhibit A" that the proceeds of the trust estate after reimbursing the trustee for advancements, expenses, compensation and other claims mentioned therein, should be distributed pro-rata among the creditors of the lumber company and the mill company.



Pursuant to said plan and agreement, between the dates of February 9, 1916, and May 11, 1916, the said Mechanics Loan & Trust Company, a corporation, did advance or cause to be advanced to the said Stack-Gibbs Lumber Company, a corporation, for the purposes set forth in said instrument, the sum of \$100,000, which amount was evidenced by notes executed by the Stack-Gibbs Lumber Company, a corporation, made payable to the order of Mechanics Loan & Trust Company or to the Exchange National Bank of Spokane, which said notes and each of them drew interest at the rate of six per cent. per annum from date and were made payable ninety days after date, and all the money advanced by the said Mechanics Loan & Trust Company under and by virtue of the said agreement was furnished, at its instance and request and at the instance and request of the several parties who signed said instrument marked Exhibit "A," by the said Exchange National Bank of Spokane, and the said Stack-Gibbs Lumber Company did receive the full sum of \$100,000 so advanced. That as the said notes became due before the petition in bankruptcy herein was filed they were not paid but renewed by the said Stack-Gibbs Lumber Company. A list of said renewal is as follows:

8 notes for \$5,000 each, dated May 9, 1916, due 90 days after date, with interest on each of said notes from May 9, 1916, to date of filing the petition, amounting to \$67.51, which notes are hereto attached and made a part hereof, marked Exhibits "B" to "I" inclusive.

1 note for \$2,500, dated May 11, 1916, with interest thereon from date until July 29, 1916, amounting to \$32.93, which note is hereto attached and made a part hereof, marked Exhibit "J."

2 notes for \$2,500, each, dated May 11, 1916, payable to the Exchange National Bank of Spokane, on demand, which notes are hereto attached and made a part hereof, marked Exhibits "K" and "L," and which said notes were given by the said Stack-Gibbs Lumber Company to take the place and stead of notes for the same amounts made payable to the Mechanics Loan & Trust Company, the said original notes being placed in the hands of the Exchange National Bank of Spokane for the purpose of collection, and through inadvertence and mistake the said bank took the renewal notes on the bank's form of promissory notes and each of said notes was endorsed by the Mechanics Loan & Trust Company.

4 notes for \$5,000 each, dated May 16, 1916, payable 90 days after date, which notes are hereto attached and made a part hereof, marked Exhibits "M" to "P" inclusive, and said notes being made out on the form of note running to the Exchange National Bank of Spokane. These notes were renewals of notes running to the Mechanics Loan & Trust Company which had been placed in the hands of the Exchange National Bank of Spokane for the purpose of collection and said renewal notes were inadvert-

ently made out on the form of note running to the Exchange National Bank of Spokane, and each of said notes were endorsed by the Mechanics Loan & Trust Company.

1 note for \$5,000, dated May 24, 1916, payable 90 days after date, which is hereto attached and made a part hereof, marked Exhibit "Q."

1 note for \$5,000, dated May 26, 1916, payable 90 days after date, which is hereto attached and made a part hereof, marked Exhibit "R."

1 note for \$5,000, dated June 5, 1916, payable 90 days after date, which is hereto attached and made a part hereof, marked Exhibit "S."

1 note for \$5,000, dated June 6, 1916, payable 90 days after date, which is hereto attached and made a part hereof, marked Exhibit "T."

1 note for \$5,000, dated June 8, 1916, payable 90 days after date, which is hereto attached and made a part hereof, marked Exhibit "U."

1 note for \$2,500, dated June 13, 1916, payable 90 days after date, which is hereto attached and made a part hereof, marked Exhibit "V."

1 note for \$5,000, dated July 7, 1916, payable 90 days after date, which is hereto attached and made a part hereof, marked Exhibit "W."

That each of said notes drew interest at the rate of six per cent. per annum from their respective dates and the total amount of interest due on the total number of notes herein mentioned on July 29, 1916, was \$1162.91, making the total amount due and payable on account of said money advances as aforesaid the sum of \$101,162.91, which amount remains due and unpaid. That no part of said debt has been paid and there are no set-offs or counter-claims to the same, and the said Mechanics Loan & Trust Company, a corporation, has not, nor has this petitioner or any one by its order, to its knowledge or belief, had or received any manner of security for said debt whatever except as herein set forth. That the notes marked "Exhibit "B" to "I" inclusive, are endorsed by C. D. Gibbs and those notes marked Exhibits "S," "T" and "U" are endorsed by the said C. D. Gibbs. That no judgment has been rendered on said claim.

Your petitioner further represents that but for the agreement entered into as hereinbefore stated and as evidenced by the written contract heretofore referred to and the signing of the same by the persons and corporations mentioned above, the said Mechanics Loan & Trust Company would not have advanced or caused to be advanced the said sum of \$100,000 or any part thereof, nor would this petitioner have advanced at the instance and request of the said Mechanics Loan & Trust Company and said other parties signing said Exhibit "A," or any of them, the said sum of \$100,000, or any part thereof, upon which said sum with interest the claim of

the Mechanics Loan & Trust Company is based and because of which the said Mechanics Loan & Trust Company claims a lien on all the property of each and every kind and character belonging to the said Stack-Gibbs Lumber Company and the said Dryad Lumber Company, or either of them, or in lieu thereof, the money now in the hands of the Trustee in Bankruptcy, which was derived from the sale of any of such property, and the dividends of the various creditors who signed said Exhibit "A."

Your petitioner further states that before the filing of the claim herein for the sum of \$101,162.91 by the Mechanics Loan & Trust Company, your petitioner delivered to said Mechanics Loan & Trust Company, the said promissory notes referred to herein and also referred to in the claim of said trust company, and authorized said trust company to file a claim herein in its own name therefor in the manner and form of its said amended claim, and does hereby authorize said Mechanics Loan & Trust Company to proceed in its own name with the enforcement of the collection of said claim and the enforcement of the lien claimed by it in the above entitled proceedings.

This petition is made and filed for the purpose of removing any possible doubt as to the party who is entitled to have said claim allowed and any and all possible technical objections in relation to said claim of the Mechanics Loan & Trust Company.

WHEREFORE, your petitioner prays that the claim of said Mechanics Loan & Trust Company hereinbefore filed in said cause for the said sum of

\$101,162.91 be allowed to said Trust Company and that said Trust Company have a preference as prayed for therein, and that all dividends thereon be paid to said Trust Company.

EXCHANGE NATIONAL BANK OF SPOKANE.

By Edwin T. Coman, President.

Post, Russell, Carey & Higgins, Attorneys for  
Petitioner.

State of Washington,  
County of Spokane,—ss.

Edwin T. Coman, being first duly sworn, on oath deposes and says: That he is the President of the EXCHANGE NATIONAL BANK OF SPOKANE, Washington, and is authorized by it to make this verification in support of the foregoing petition; that he has read the foregoing petition, knows the contents thereof, and believes the same to be true, and that he is authorized by the said Exchange National Bank of Spokane, Washington, to make the foregoing petition for and on its behalf.

EDWIN T. COMAN.

Subscribed and sworn to before me this 17th day of February, A. D. 1917.

A. E. RUSSELL,

Notary Public in and for the State of Wash-  
ington, residing at Spokane.

(N. P. Seal.)

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EXHIBIT A.

*This Indenture*, made this 1st day of February, in the year of our Lord One Thousand Nine Hundred and Sixteen, by and between STACK-GIBBS



LUMBER COMPANY, a Corporation organized under the laws of Michigan, hereinafter referred to as the "Lumber Company," DRYAD LUMBER COMPANY, a corporation organized under the laws of Washington, hereinafter referred to as the "Mill Company," C. D. GIBBS, of Spokane, Washington, hereinafter referred to as "Stockholder," and MECHANICS LOAN & TRUST COMPANY, a corporation organized and existing under the laws of Washington, hereinafter known as "holder of Trust Deed," parties of the first part, and MECHANICS LOAN & TRUST COMPANY, a corporation organized and existing under the laws of the State of Washington, hereinafter referred to as the "Trustee," party of the second part and sundry creditors of the Lumber Company and the Mill Company, who have executed this instrument for the purpose of acceding to its terms and becoming bound thereby, who are hereinafter referred to as the "Creditors," party of the third part.

WITNESSETH.

*That Whereas,* the Lumber Company and the Mill Company have heretofore been and are now engaged in the business of logging and the manufacture of lumber and allied products, and as well other business relating thereto, in the course of which business they have incurred indebtedness to divers individuals and corporations.

*And Whereas,* the value of the property of the Lumber Company, and the Mill Company considerably exceeds their indebtedness, but nevertheless

they are unable to obtain means to pay the indebtedness due and presently to become due.

*And Whereas*, all the parties hereto are agreed that the plan herein outlined for realizing upon the property of the Lumber Company and the Mill Company and securing money to pay their presently due indebtedness and for satisfying their indebtedness is for the best interests of all concerned, and necessary to be adopted in order to avoid the heavy costs and expenses which would attend upon the realizing upon their property and the settlement of their indebtedness through receivership or bankruptcy proceedings;

*Now Therefore*, in consideration of the premises hereof and of other good and valuable consideration moving between the parties hereto, the said Stack-Gibbs Lumber Company and the said Dryad Lumber Company do hereby assign, transfer, set over, give, grant, bargain, sell, convey, remise, release and confirm unto the said Mechanics Loan & Trust Company, its successors or assigns, as Trustees as hereinafter set forth, all and singular the hereinafter described property, to-wit:

The following described real estate situate in Benewah County, State of Idaho, to-wit:

Lot numbered Four (4) or the Northwest Quarter of the Northwest Quarter ( $NW\frac{1}{4}$  of  $NW\frac{1}{4}$ ) of Section Five (5), Township Forty-three (43), North of Range One (1), West of Boise Meridian; Northwest Quarter ( $NW\frac{1}{4}$ ) of Section Twenty-four (24), Township Forty-four (44), North of Range One (1), West of Boise Meridian; South Half of



Southeast Quarter ( $S\frac{1}{2}$  of  $SE\frac{1}{4}$ ) and South Half of Southwest Quarter ( $S\frac{1}{2}$  of  $SW\frac{1}{4}$ ) in Section Twenty-eight (28), Township Forty-four (44), North of Range One (1), West Boise Meridian; East Half of Southeast Quarter ( $E\frac{1}{2}$  of  $SE\frac{1}{4}$ ) and Southwest Quarter of Southeast Quarter ( $SW\frac{1}{4}$  of  $SE\frac{1}{4}$ ) of Section Four (4), Township Forty-three (43), North of Range Two (2), W. B. M.; Lot Three (3) or the Northwest Quarter of Northeast Quarter ( $NW\frac{1}{4}$  of  $NE\frac{1}{4}$ ) and the Southwest Quarter of the Northeast Quarter ( $SW\frac{1}{4}$  of  $NE\frac{1}{4}$ ) of Section Nine (9), Township Forty-three (43), North of Range Two (2), W. B. M.; the East Half of the Northeast Quarter ( $E\frac{1}{2}$  of  $NE\frac{1}{4}$ ) of Section Ten (10), Township Forty-three (43), North of Range Two (2), W. B. M.; Northwest Quarter of Southwest Quarter ( $NW\frac{1}{4}$  of  $SW\frac{1}{4}$ ) of Section Ten (10), Township Forty-three (43), North of Range One (1), East of Boise Meridian; Northwest Quarter ( $NW\frac{1}{4}$ ) of Section Nineteen (19), Township Forty-four (44), North of Range One (1), East of Boise Meridian; Lot numbered Seven (7) in Block numbered Three (3) in River Front Addition to the Town of St. Maries;

All the standing timber, together with the right to cut and remove the same, on the following described real estate situate in said Benewah County:

Lots One (1) and Two (2) or the North Half of the Northeast Quarter ( $N\frac{1}{2}$  of  $NE\frac{1}{4}$ ), the South Half of the Northeast Quarter ( $S\frac{1}{2}$  of  $NE\frac{1}{4}$ ), Lots Three (3) and Four (4) or North Half of North-

west Quarter ( $N\frac{1}{2}$  of  $NW\frac{1}{4}$ ), the South Half of the Northwest Quarter ( $S\frac{1}{2}$  of  $NW\frac{1}{4}$ ), the North Half of the Southwest Quarter ( $N\frac{1}{2}$  of  $SW\frac{1}{4}$ ), the North Half of the Southeast Quarter ( $N\frac{1}{2}$  of  $SE\frac{1}{4}$ ), and the Southeast Quarter of the Southeast Quarter ( $SE\frac{1}{4}$  of  $SE\frac{1}{4}$ ) of Section Four (4), Township Forty-three (43), North of Range One (1), West Boise Meridian; Lots One (1) and Two (2) or the North Half of the Northeast Quarter ( $N\frac{1}{2}$  of  $NE\frac{1}{4}$ ), the South Half of the Northeast Quarter ( $S\frac{1}{2}$  of  $SE\frac{1}{4}$ ) and the Southwest Quarter of the Southeast Quarter ( $SW\frac{1}{4}$  of  $SE\frac{1}{4}$ ) of Section Five (5), Township Forty-three (43), North of Range One (1), West of Boise Meridian; the Northeast Quarter, the Northwest Quarter and the West Half of the Southwest Quarter ( $NE\frac{1}{4}$ ,  $NW\frac{1}{4}$ ,  $W\frac{1}{2}$  of  $SW\frac{1}{4}$ ) of Section Nine (9), Township Forty-three (43), North of Range One (1), West of the Boise Meridian; all of Section Four (4), Township Forty-four (44), North of Range One (1), W. B. M.; the South Half of the Southeast Quarter ( $S\frac{1}{2}$  of  $SE\frac{1}{4}$ ) of Section Fifteen (15), the same township and range; the North Half of the Northwest Quarter ( $N\frac{1}{2}$  of  $NW\frac{1}{4}$ ) and the Northwest Quarter of the Northeast Quarter ( $NW\frac{1}{4}$  of  $NE\frac{1}{4}$ ), the Southwest Quarter of the Southeast Quarter ( $SW\frac{1}{4}$  of  $SE\frac{1}{4}$ ) of Section Twenty-two (22), same township and range; the West Half of the Northeast Quarter ( $W\frac{1}{2}$  of  $NE\frac{1}{4}$ ) and the Northwest Quarter of the Southeast Quarter ( $NW\frac{1}{4}$  of  $SE\frac{1}{4}$ ) of Section Twenty-seven (27), the same township and range; the Northeast Quarter ( $NE\frac{1}{4}$ )

of Section Twenty-eight (28), the same township and range.

The following described real estate, situate in the County of Shoshone, State of Idaho:

Southwest Quarter of Northeast Quarter ( $SW\frac{1}{4}$  of  $SE\frac{1}{4}$ ), Southeast Quarter of Northwest Quarter ( $SE\frac{1}{4}$  of  $NW\frac{1}{4}$ ), Lots Three (3) and Four (4) or the North Half of the Northwest Quarter ( $N\frac{1}{2}$  of  $NW\frac{1}{4}$ ) of Section Two (2), Township Forty-two (42), North of Range One (1), East of the Boise Meridian; Lots One (1) and Two (2) or the North Half of the Northeast Quarter ( $N\frac{1}{2}$  of  $NE\frac{1}{4}$ ) of Section Three (3), same township and range; the Southwest Quarter of the Northeast Quarter ( $SW\frac{1}{4}$  of  $NE\frac{1}{4}$ ), the Southeast Quarter of the Northwest Quarter ( $SE\frac{1}{4}$  of  $NW\frac{1}{4}$ ), the Northeast Quarter of the Southwest Quarter ( $NE\frac{1}{4}$  of  $SW\frac{1}{4}$ ) and the Northwest Quarter of the Southeast Quarter ( $NW\frac{1}{4}$  of  $SE\frac{1}{4}$ ) of Section Twenty-four (24), same township and range; the Northeast Quarter of the Southwest Quarter ( $NE\frac{1}{4}$  of  $SW\frac{1}{4}$ ) of Section Ten (10), Township Forty-three (43), North of Range One (1), East of Boise Meridian; Southeast Quarter of the Northeast Quarter ( $SE\frac{1}{4}$  of  $NE\frac{1}{4}$ ) of Section Two (2), same township and range; the Southwest Quarter of the Northwest Quarter ( $SW\frac{1}{4}$  of  $NW\frac{1}{4}$ ) and the Northwest Quarter of the Southwest Quarter ( $NW\frac{1}{4}$  of  $SW\frac{1}{4}$ ) of Section Twenty-three (23), same township and range; the West Half of the Northeast Quarter ( $W\frac{1}{2}$  of  $NE\frac{1}{4}$ ) and the West Half of the Southeast Quarter ( $W\frac{1}{2}$  of  $SE\frac{1}{4}$ ) of Section Thirty-four (34), same township and range;

the East Half of the Southwest Quarter ( $E\frac{1}{2}$  of  $SW\frac{1}{4}$ ) and the West Half of the Southeast Quarter ( $W\frac{1}{2}$  of  $SE\frac{1}{4}$ ) of Section Thirty-five (35), same township and range; the Southwest Quarter and the West Half of the Southeast Quarter ( $SW\frac{1}{4}$ ,  $W\frac{1}{2}$  of  $SE\frac{1}{4}$ ) of Section Twenty-four (24), Township Forty-eight (48), North of Range One (1), East of Boise Meridian; the Northeast Quarter and the North Half of the Southeast Quarter ( $NE\frac{1}{4}$ ,  $N\frac{1}{2}$  of  $SE\frac{1}{4}$ ) of Section Twenty-five (25), same township and range; the North east Quarter ( $NE\frac{1}{4}$ ) of Section Twenty-six (26), same township and range; the Southeast Quarter of the Northeast Quarter ( $NE\frac{1}{4}$  of  $SE\frac{1}{4}$ ) of Section Two (2), Township Forty-five (45), North of Range Two (2), East of the Boise Meridian.

All the standing timber and the right to cut and remove the same on the following described real estate, situate in Shoshone County, Idaho:

The Northeast Quarter of the Northwest Quarter ( $NE\frac{1}{4}$  of  $NW\frac{1}{4}$ ) of Section Three (3), Township Forty-two (42), North of Range One (1), East of the Boise Meridian; the Southeast Quarter of the Southeast Quarter ( $SE\frac{1}{4}$  of  $SE\frac{1}{4}$ ) of Section Twenty-two (22), Township Forty-three (43), North of Range One (1), East of the Boise Meridian; the Southwest Quarter of the Southwest Quarter ( $SW\frac{1}{4}$  of  $SW\frac{1}{4}$ ) of Section Twenty-three (23), the same township and range; the East Half of the Northeast Quarter ( $E\frac{1}{2}$  of  $NE\frac{1}{4}$ ) of Section Twenty-seven (29), the same township and range.

Also the following described real estate situate in Clearwater County, State of Idaho:

Lots One (1) and Two (2) or the North Half of the Northeast Quarter ( $N\frac{1}{2}$  of  $NE\frac{1}{4}$ ), the South Half of the Northeast Quarter ( $S\frac{1}{2}$  of  $NE\frac{1}{4}$ ), Lots Three (3) and Four (4) or the North Half of the Northwest Quarter ( $N\frac{1}{2}$  of  $NW\frac{1}{4}$ ), the South Half of the Northwest Quarter ( $S\frac{1}{2}$  of  $NW\frac{1}{4}$ ) and the Southwest Quarter ( $SW\frac{1}{4}$ ) of Section Five (5), Township Forty-one (41), North of Range Two (2), East of the Boise Meridian.

The standing timber and the right to cut and remove the same on the following described real estate situate in Clearwater County, State of Idaho:

The West Half of the Northwest Quarter ( $W\frac{1}{2}$  of  $NW\frac{1}{4}$ ) of Section Twenty-nine (29), Township Thirty-nine (39), North of Range Three (3), East of the Boise Meridian; the East Half of the Northeast Quarter ( $E\frac{1}{2}$  of  $NE\frac{1}{4}$ ) of Section Thirty (30), same township and range;

The following described real estate situate in Latah County, State of Idaho:

The Southeast Quarter of the Southeast Quarter ( $SE\frac{1}{4}$  of  $SE\frac{1}{4}$ ) of Section Fourteen (14), Township Forty-two (42), North of Range One (1), West of the Boise Meridian; the Northeast Quarter of the Northeast Quarter ( $NE\frac{1}{4}$  of  $NE\frac{1}{4}$ ) of Section Twenty-three (23), same township and range; the North Half of the Northwest Quarter ( $N\frac{1}{2}$  of  $NW\frac{1}{4}$ ), the East Half of the Southwest Quarter ( $E\frac{1}{2}$  of  $SW\frac{1}{4}$ ), the West Half of the Southeast Quarter ( $W\frac{1}{2}$  of  $SE\frac{1}{4}$ ) of Section Twenty-four



(24), same township and range; the Southeast Quarter of the Northeast Quarter ( $SE\frac{1}{4}$  of  $NE\frac{1}{4}$ ) of Section Twenty-five (25), same township and range; and South Half of the Northeast Quarter ( $S\frac{1}{2}$  of  $NE\frac{1}{4}$ ), Southeast Quarter of Northwest Quarter ( $SE\frac{1}{4}$  of  $NW\frac{1}{4}$ ), Northwest Quarter of Southeast Quarter ( $NW\frac{1}{4}$   $SE\frac{1}{4}$ ) of Section Eight (8), Township Forty-two (42), North of Range One (1), East of the Boise Meridian; the North Half of the Northeast Quarter ( $N\frac{1}{2}$  of  $NE\frac{1}{4}$ ).

East Half of the Northwest Quarter ( $E\frac{1}{2}$  of  $NW\frac{1}{4}$ ) of Section Eighteen (18), same township and range; the East Half of the Southeast Quarter ( $E\frac{1}{2}$  of  $SE\frac{1}{4}$ ) of Section Twenty-eight (28), same township and range; the East Half of the Northeast Quarter ( $E\frac{1}{2}$  of  $NE\frac{1}{4}$ ) of Section Thirty-three (33), same township and range.

The standing timber and the right to cut and remove the same on the following described real estate, situate in Latah County, Idaho:

Lot Four (4) or the Northwest Quarter of Northwest Quarter ( $NW\frac{1}{4}$  of  $NW\frac{1}{4}$ ), the Southwest Quarter of Northwest Quarter ( $SW\frac{1}{4}$  of  $NW\frac{1}{4}$ ) and the Northwest Quarter of Southwest Quarter ( $NW\frac{1}{4}$  of  $SW\frac{1}{4}$ ) of Section Three (3), Township Forty-two (42), North of Range One (1), East of the Boise Meridian.

The following described real estate situate in Kootenai County, State of Idaho:

Lot Forty-six (46), Section Fourteen (14), Township Fifty (50), North of Range Four (4), West of Boise Meridian, excepting right-of-way sold to Coeur



d'Alene & Pend d'Oreille Railway Company and water-rights sold to Dryad Lumber Company for boom purposes; Lot Forty-seven (47), Section Fourteen (14), the same township and range, except water-rights sold to Dryad Lumber Company for booming purposes.

Also the property real, personal and mixed of Dryad Lumber Company, as more fully described in the schedule hereto attached marked "Exhibit A" and made a part hereof, it being agreed that said schedule contains a correct description of all the property owned by said Dryad Lumber Company.

Also all the fixtures, machinery, stock in trade, raw, wrought, and in process of manufacture, tools, horses, carriages, wagons, railroad, sidings, spurs, turn-outs, roadbeds, trestles, locomotives, cars, rolling stock, tracks, rails, bridges, engines, boilers, dynamos, lines, poles, wires, cables, conduits, instruments, equipment, appliances, materials, moneys, books, papers, records, accounts, franchises, licenses, agreements, contracts, rights, easements, promissory notes, policies of insurance, and all other property and property rights of whatsoever character or nature, and wherever situate, real, personal or mixed, now or at any time hereafter acquired, owned, held, possessed, or enjoyed, or in any manner conferred upon the Lumber Company and the Mill Company, it being intended and agreed that all of the property of every kind now owned, possessed, or enjoyed, and which may hereafter be in anywise acquired, owned, possessed, or enjoyed by the Lumber Company and Mill Company, shall be as fully embraced within the

provisions hereof and subject to the lien hereby created as if the said property were now owned by the Lumber Company and the Mill Company and were specifically described herein, and specifically conveyed hereby.

*To Have and to Hold* to the said Trustee, its successors or assigns, to its and their use forever, but in trust, nevertheless, and for the uses and purposes following, to-wit:

1. The Trustee shall forthwith take possession of the trust estate as of an estate in fee simple, and shall have and possess the same power to control, use, manage, and dispose of the same, and to incur all proper expenses in connection therewith, as in its judgment shall seem to the best interest of all the parties hereto, as though it was the absolute owner thereof.

2. The Trustee may, in its discretion, but shall not be required to, carry on the whole or any part of the business heretofore conducted by the Lumber Company and the Mill Company; may operate mills, cut logs, saw timbers, manufacture lumber into various forms, and transact any form of business heretofore conducted by the Lumber Company and Mill Company and for such purposes, or any other purpose which it deems proper and in realizing upon the trust estate, may use any and all of the trust estate as it thinks best, and in carrying on such business it may incur such expense as it thinks necessary to the proper conduct thereof, including necessary maintenance, replacement or supplying of new tools, machinery and apparatus.

3. The Trustee may employ such persons as it deems necessary, officers and employees of the Lumber Company and Mill Company, as well as others, for the proper management, use, enjoyment and realization upon the trust estate, and may pay persons so employed reasonable compensations.

4. The Trustee shall collect such debts owing to the Lumber Company and Mill Company as are collectible in the exercise of ordinary diligence, and may take security for, extend time of, compromise, or in any way it thinks proper settle any debt which in its opinion is of doubtful collectibility.

5. The Trustee shall realize upon the trust estate as rapidly as in its judgment it is possible to do so without unreasonable sacrifice thereof, and shall have power to sell and convey any or all of the trust estate at such prices and upon such terms as it considers proper, and its deed or bill of sale shall convey full and complete title to the purchaser free and clear of all right, title, claim, or lien of the Lumber Company and the Mill Company or of any other party hereto.

6. The Trustee shall receive as compensation, for its services as Trustee hereunder, the sum of Ten Thousand Dollars, (\$10,000.00) provided the Trusteeship is terminated within two (2) years from the date hereof, and shall be entitled to reimbursement for sums paid for legal services in the administration of the Trust, including the preparation of this Instrument.

7. The Trustee may, but shall not be required to, pay the claim of any creditor of the Lumber Com-

pany and the Mill Company who does not desire to become or who is deemed inadvisable to have become a party to this instrument, except as modified in section 10 hereof.

8. The Trustee may institute, conduct or defend any suit or litigation which it considers advisable or necessary to the protection of the trust estate, and it shall be repaid from the trust estate all liability, cost and expense to which it may be put in the course of such litigation, including attorney's fees.

9. If in the conduct and management of the trust estate, damage is done third parties to whom the Trustee is or may be held liable therefor, the Trustee shall be reimbursed and indemnified against any liability of claim therefor from the trust estate, whether such damage was caused by the negligence or misconduct of its officers, agents and employees, or not.

10. The Trustee shall advance such sums of money as it shall deem necessary to meet the present payroll of the Lumber Company and the Mill Company, and to discharge the claims of the creditors who do not execute this instrument as it may deem necessary or requisite to protect the trust estate, not to exceed, however, the sum of One Hundred Thousand (\$100,000) Dollars, and the Trustee shall have a first and preference claim upon said trust estate for the amount of such advancement, and the same shall be repaid to it out of the first proceeds of sales of the trust property, or any part thereof, or the first proceeds of any of the collected accounts or bills receivable, together with interest thereon from the

date of such advancement at the rate of six per cent. per annum.

11. Payments made by the Trustee under the provision of Sections 1 to 10 inclusive hereof, with interest from the time of payment to reimbursements, as well as the compensation of the Trustee, shall be deemed maintenance charges of the trust estate and shall be paid from the proceeds of the trust estate in preference to any other claims thereupon.

12. The Lumber Company and the Mill Company may execute notes, or may renew existing notes, or renew renewal notes, for their indebtedness, and any such notes or renewals shall have the same right hereunder as have the claims of the creditors in their present form.

13. The Trustee may, but it shall not be required to, pay interest accruing upon the interest bearing claims of the creditors, if it has money in the trust estate which it deems not required for other purposes; provided, however, that any such interest payment shall be pro-rated among all the creditors holding interest bearing claims.

14. The Creditors agree that neither this instrument nor anything done or to be done in pursuance of its provisions shall be construed as a preference to any creditor, or an act of bankruptcy, but that it is entered into in pursuance of a plan which is considered equitable between all the creditors of the Lumber Company and the Mill Company and which will secure the most advantageous disposal of their property for the benefit of their creditors. The



Creditors likewise agree that while this instrument remains in effect, and no provision hereof is violated, they will not sue the Lumber Company or the Mill Company in any court on their demands nor commence any bankruptcy or receivership proceedings against them. They understand and agree, also, that the Lumber Company and the Mill Company would not have executed this instrument and that the Trustee would not have consented to act as Trustee hereunder or to assume the obligations herein assumed by it, except upon the express agreement of the Creditors in this section contained.

15. The Trustee may select and employ in and about the execution of the trust suitable agents and attorneys, and it shall not be held liable for any neglect, omission, mistake or misconduct of any such agent or attorney, if reasonable care has been exercised in the selection, and shall not be held liable for any loss or damage not caused by its own negligence or default. Neither shall it be held to have agreed to pay or be liable for any loss or damage occasioned by its failure to pay any tax, assessment, indebtedness or lien upon the trust estate, save and except the taxes, indebtedness and charges which in the tenth section hereof it has expressly agreed to pay.

16. It is understood that the Central Warehouse Lumber Company of Minneapolis, Minnesota, has advanced to the Lumber Company a sum of approximately Thirty-two Thousand Dollars (\$32,000) under an agreement whereby the amount of such advancement shall be repaid in whole in part in lum-



ber, and it is agreed that said Trustee shall recognize said contract and carry out and perform the terms thereof notwithstanding any contrary provisions herein contained. It is also agreed that if there should be any other outstanding contracts of similar nature entered into by the Lumber Company or the Mill Company, the Trustee may in its discretion and according to its best judgment carry out the terms thereof, or make such adjustment thereof as to it may seem just and proper.

17. If at any time during the continuance of the trust any tax, charge or indebtedness shall accrue which would be a lien or charge upon the trust estate superior to the claims of the parties hereto, and which, in the opinion of the Trustee, it is to the best interests of the parties hereto to be paid, then the Trustee may, but shall not be required to, pay such tax, charge or indebtedness, and thereupon the amount so paid, together with interest thereon at the rate of six per cent. per annum from date of payment, shall become a charge upon the trust estate, and shall be paid out of the first money available therefrom.

18. The trust hereby created shall terminate (a) upon the payment of all the indebtedness owing by the Lumber Company to the parties to this agreement, (b) upon the agreement of the Creditor representing at least a majority in amount of the indebtedness of the Lumber Company, and who shall have signed the within agreement to the effect that the trust shall be terminated and the trust estate reconveyed to the Lumber Company and the Mill

Company without liability on the part of the Trustee, or (c) upon the disposition of the entire trust estate and the application of its proceeds as herein provided.

The Creditors signing the within instrument shall make out and file with the Trustee their claims against the Lumber Company and the Mill Company within sixty (60) days from notice of the acceptance of the within trust by the trustee. Copies of said claims shall be sent by the trustee, to the Lumber Company and the Mill Company and to each creditor who shall have signed the within instrument, and if no objections to same shall be filed with the trustee within thirty (30) days thereafter, then such claims shall be allowed by the Trustee as filed. The proceeds of the trust estate, after reimbursing the Trustee for advancements, expenses, compensation and other claims mentioned herein, shall be distributed pro rata among the Creditors of the Lumber Company and the Mill Company. Upon the termination of the trust and an accounting by the Trustee with the Lumber Company and the Mill Company and the Creditors, and the reimbursement of the Trustee for all sums expended or loaned by it hereunder, the trust estate shall be reconveyed to the Lumber Company and the Mill Company.

19. The compensation of the Trustee and expenses incurred and advancements made by it shall constitute a charge upon the trust estate superior to the indebtedness of any party secured hereby, and the Trustee may not be removed nor be deprived of the trust estate in any manner until the payment

of its compensataion, expenses and advancements have been fully provided for, provided that upon the failure of the trustee to accept the trust hereunder or upon its refusal to act after its acceptance, the creditors who have signed this instrument, holding a majority in amount of the indebtedness, of the Lumber Company, may by deed appoint a new trustee.

The Lumber Company and the Mill Company agree that they will execute such further and additional conveyances, undertakings and agreements as shall be necessary to fully effectuate the intent of this instrument and vest title to all of their property in the Trustee, in trust for the uses and purposes herein provided.

Several copies hereof may be executed and delivered, and each copy which is duly executed and delivered shall be treated for all purposes as an original instrument.

20. This instrument shall not take effect until creditors representing ninety per cent. in amount of the indebtedness of the Lumber Company, have attached their signatures hereto and until the holder of the Trust Deed on the property of the Mill Company, which Trust Deed is due, has extended same for a period of two years from date, provided, however, that the debt represented by the Trust Deed shall pro rate with the other Creditors, who have signed the within instrument, as to all distributions of dividends after one year from date hereof.

21. It is further agreed that this instrument shall not take effect until said Stockholder shall cause

a meeting of the Stockholders of said Lumber Company and said Mill Company, to be held immediately, at which the resignations of the present Secretaries and Treasurers of the two companies shall be obtained, and also the resignations of one of the directors of each of said companies, and that Siegmund Katz, of Chicago, Illinois, shall be elected by said Stockholders of said Lumber Company and said Mill Company, a Director and Secretary and Treasurer of each of said companies, and provided further that said Katz, or any other person that the majority in amount of the creditors of the Lumber Company who shall sign the within instrument, shall name, shall be elected and retained as such Director and officer of such Lumber Company and such Mill Company, until the trust created by the within instrument shall be terminated.

22. It is specifically agreed that the claim of the Shoshone Lumber Company, for the sum of Five Thousand Dollars, (\$5,000) and interest represents the purchase price of timber, on which a Vendors lien is retained by the said Shoshone Lumber Company, until the payment of said purchase price, and it is agreed that said claim will be paid by the Trustee within six (6) months from date hereof, as a preferred claim.

23. It is further agreed that the claim of the Idaho Timber Company is secured by the ownership of the following log mark placed upon certain White Pine and Spruce logs landed upon Marble Creek, to-wit:

Bark mark, D E, and

End mark, A.

And such logs hereafter delivered to the Lumber Company or to the Mill Company shall be paid for by the Trustee at the rate of Sixteen (\$16.00) Dollars per thousand feet, board measure, for White Pine logs, and Six (\$6.00) Dollars, per thousand feet for Spruce logs and the amount thereof shall be deducted from the claim of said Idaho Timber Company. The balance of said claim shall pro rate with the other Creditors in accordance with the terms of this instrument.

*In Witness Whereof*, the parties hereunto have set their hands and affixed their corporate seals the day and year herein first written.

STACK-GIBBS LUMBER COMPANY,

(Corporate Seal) By C. D. Gibbs, President.  
S. Katz, Secretary.

DRYAD LUMBER COMPANY,

(Seal) By B. G. Nelson, President.  
S. Katz, Secretary.

(Seal)

C. D. Gibbs, Stockholder.

MECHANICS LOAN & TRUST COMPANY,

(Corporate Seal) *Holder of Trust Deed.*

By Wm. Huntley, President.

William H. Kaye, Asst. Secretary.

MECHANICS LOAN & TRUST COMPANY,

(Corporate Seal) *Trustee.*

By Wm. Huntley, President.

William H. Kaye, Asst. Secretary.



## EXHIBIT A.

All of the following described real estate and personal property, estates, rights, privileges and appurtenances situated and being in the County of Kootenai, State of Idaho, to-wit:

Lot eight (8) and lot nine (9) and that part of lot seven (7) lying south of the right of way of the Northern Pacific Railway in section eleven (11) township 50, N., Range 4 W. B. M., excepting the right-of-way of the Coeur d'Alene & Spokane Railway Company through said lot eight (8), said right-of-way so excepted being sixty feet in width, and the center line thereof being described as follows, to-wit:

"Beginning at a point on the east boundary line of said lot eight (8) 424 feet more or less north of a stone monument on the north bank of the Spokane River, said monument being the southeast corner of said lot eight (8), thence north 51 degrees, 31 minutes west five feet; thence on a curve to the left 5730 feet radius for a distance of 716.6 feet to a point on the west line of said lot (8) at a distance of 419 feet more or less south of the west quarter corner of said section eleven (11)," excepting also such rights as the Coeur d'Alene & Spokane Railway Company may have under the lease from Lost Lake Lumber Company to said Coeur d'Alene & Spokane Railway Company, dated October 20th, 1906, and excepting such rights as the Northern Pacific Railway Company may have to the spur track running to the Planing Mill; excepting also that portion of lot eight (8) deeded by party of the first part April 22nd, 1910, to the Coeur d'Alene & Pend d'Oreille



Railway Company for right-of-way described as follows: "Beginning at a point on the west line of said lot eight (8), section eleven (11) at the intersection of the north line of the right of way of the Coeur d'Alene & Spokane Railway Company, thence running in a southeasterly direction along said north line of said right of way to the east line of said lot eight (8), thence north along the east line of said lot eight (8) to a point on said east line two hundred feet northeasterly from the center line of the Coeur d'Alene & Spokane Railway Company measured at right angles thereto, thence in a northwesterly direction four hundred (400) feet to a point which is sixty feet northeasterly from the north line of the right of way of said Coeur d'Alene & Spokane Railway Company measured at right angles thereto; thence northwesterly along a line sixty feet north of and parallel to said right of way line to the west line of lot eight (8), thence south along said west line to the place of beginning."

Excepting also that portion of said lots seven (7) and eight (8) deeded by the party of the first part May 6th, 1910, to the Coeur d'Alene & Pend d'Oreille Railway Company for right-of-way, and described as follows, to-wit: "A strip of land fifteen feet in width, being seven and one-half ( $7\frac{1}{2}$ ) feet on each side of the center line of the spur track of the Coeur d'Alene & Pend d'Oreille Railway Company in said lots seven (7) and eight (8), said center line being more particularly described as follows, to-wit: Beginning at a point on the center line of the main

track of the Coeur d'Alene & Pend d'Oreille Railway Company thirty-nine (39) feet northwesterly from the intersection of said center line with the west line of said section eleven (11), and running thence in an easterly and northeasterly direction along a line curving to the left with a radius of 942.3 feet for a distance of 102 feet; thence along a line curving to the left with a radius of 359.3 feet for a distance of 543.5 feet; thence in a straight line for a distance of 410 feet.

Lot sixteen (16) and lot twenty-two (22) in section eleven (11), township 50, N., range 4 W. B. M., excepting the right-of-way of the Coeur d'Alene & Spokane Railway Company, which right-of-way is one hundred feet in width on each side of the center line of the railway of said Coeur d'Alene & Spokane Railway Company as the same was definitely surveyed through, over and across said lots sixteen (16) and twenty-two (22), excepting also that portion of lots sixteen (16) and twenty-two (22) deeded by parties of the first part to Coeur d'Alene & Pend d'Oreille Railway Company, April 22nd, 1910, for right-of-way and described as follows: "A strip of land one hundred feet in width extending southeasterly and northwesterly through lot sixteen (16) in said section eleven (11), township 50 north, range 4 West B. M., said strip of land lying north of and adjoining the right-of-way of the Coeur d'Alene & Spokane Railway Company, also a strip of land one hundred feet in width running in a northwesterly and southeasterly direction through lot twenty-two

(22) in said section eleven (11), township 50, N. R. 4 W. B. M., said strip of land lying on the north-east side of and adjoining the right of way of the Coeur d'Alene & Spokane Railway Company."

All of that part of lot two (2) in section fourteen (14), township 50, N. R. 4 W. B. M., lying west of the right-of-way of said Coeur d'Alene & Spokane Railway Company, excepting that portion deeded by the parties of the first part April 22nd, 1910, to the Coeur d'Alene & Pend d'Oreille Railway Company for right-of-way and described as follows: "All that part of lot two (2) in section fourteen (14) township 50, N. R. 4 W. B. M. lying on the west side of the right of way of the Coeur d'Alene & Spokane Railway Company, excepting that the parties of the first part reserve to themselves and to their assigns all booming rights and privileges in the river and along the river in front of said lot two (2) with the right to attach booms to the shore line of said lot two and also reserve the right to an easement along said shore line for the purpose of traveling back and forth in the management of said booming rights and privileges, said right to be exercised in such manner as to interfere with the railroad as little as possible, provided, however, that the Coeur d'Alene & Pend d'Oreille Railway Company shall have the right to fill the river along the river front to such an extent as may be reasonably necessary to enable them to construct and maintain its railroad between said right of way of the Coeur d'Alene & Spokane Railway Company and the river, and also

the right to protect such fill by rip rap or other necessary means to maintain the same, and provided, further, that if they shall make any fill along the bank of said river as above provided, then the said rights and privileges reserved shall apply to such fill or made ground.”

All that part of lot four (4) in section ten (10) township 50, N. R. 4 W. B. M., described as follows, to-wit:

Beginning at a point on the section line between section ten and eleven in said township and range at the high water mark on the north bank of the Spokane River, thence westerly along the said high water mark three hundred twenty-one feet, thence north sixteen and one-half feet, thence running north twenty-seven degrees, fifteen minutes east a distance of 364.1 feet to the south line of the said right of way of the Coeur d'Alene & Spokane Railway Company, thence east along the said south line of said right of way 120.1 feet, more or less, to the east line of said section ten, thence south along the east line of said section ten, to the place of beginning, together with all saw-mill buildings, boiler houses, burners, machine shops, blacksmith shops, lath mills, planing mills, power houses, boiler houses, dry kilns, repair shops, engine houses and other buildings and structures, tracks, engines, boilers, generators, machinery, tools, apparatus, furniture, fixtures, cars, appliances, poles, wires, motors, sidings, switches, rails, bridges, and all other fixtures, machinery, tools and equipment whatsoever not herein specifically de-

scribed, nor or hereinafter, in or upon or about the property hereby conveyed or any part thereof or belonging to the company, and together with any and all other fixtures, machinery and tools whatsoever not herein specifically described, in or that may hereafter be placed in or upon the premises hereby conveyed, or any building or buildings nor or hereafter standing thereon.

Also the right, power and authority in perpetuity to build, construct and maintain piers, piles and piling and stationary booms and chains attached thereto or to the shore, and to store logs within said booms in Lake Coeur d'Alene and the Spokane River along the shore and out into said lake and river of and from and opposite Lots numbered 18, 46, 47 and 7 and 8 of Section 14, Township 50 North of Range 4 West of the Boise Meridian, said described land being a part of the abandoned Fort Sherman military reservation; and all booms, chains, piles, piling and other equipment of every kind and character connected or used with such booms either at the place above mentioned or in the Spokane River at or near the saw-mill plant of the company or used in any manner in connection therewith.

State of Washington,  
County of Spokane,—ss.

On this 29th day of February, in the year 1916, before me E. E. Flood, a Notary Public in and for said County and State, personally appeared C. D. Gibbs and S. Katz known to me to be the president and secretary, respectively of the Stack-Gibbs Lumber Company, one of the corporations that executed



the instrument, and acknowledged to me that such corporation executed the same.

(Notarial Seal) (Signed) E. E. FLOOD,  
Notary Public in and for the State of Washington,  
residing at Spokane.

State of Washington,  
County of Spokane,—ss.

On this 29th day of February, in the year 1916, before me, E. E. Flood, a Notary Public in and for said County and State, personally appeared William Huntley and William H. Kaye known to me to be the president and assistant secretary, respectively, of the Mechanics Loan & Trust Company, one of the corporations that executed the instrument, and acknowledged to me that such corporation executed the same.

(Notarial Seal) (Signed) E. E. FLOOD,  
Notary Public in and for the State of Washington,  
residing at Spokane.

State of Washington,  
County of Spokane,—ss.

On this 29th day of February, in the year 1916, before me E. E. Flood, a Notary Public in and for said County and State, personally appeared B. G. Nelson and S. Katz, known to me to be the president and secretary, respectively, of the Dryad Lumber Company, one of the corporations that executed the instrument, and acknowledged to me that such corporation executed the same.

(Notarial Seal) (Signed) E. E. FLOOD,  
Notary Public in and for the State of Washington,  
residing at Spokane.



State of Washington,  
 County of Spokane,—ss.

On this 29th day of February, in the year 1916, before me, E. E. Flood, a Notary Public in and for said County and State, personally appeared William Huntley and William H. Kaye, known to me to be the president and assistant secretary, respectively, of the Mechanics Loan & Trust Company, one of the corporations that executed the instrument, and acknowledged to me that such corporation executed the same.

(Notarial Seal) (Signed) E. E. FLOOD,  
 Notary Public in and for the State of Washington,  
 residing at Spokane.

The undersigned creditors of the Stack-Gibbs Lumber Company and the Dryad Lumber Company to the amounts set opposite their names, hereby become parties to and agree to all the terms and conditions of the foregoing deed of trust.

Dated February 1st, 1916.

<i>Creditors.</i>	<i>Amount of Claim.</i>
Merrill, Cox & Co.....	\$221,250.00
By H. J. Aaron, its attorney.	
Fort Dearborn National Bank.....	107,000.00
By H. J. Aaron, its attorney.	
I. F. Searle.....	55,000.00
First National Bank, Lincoln, Nebr....	12,500.00
By I. F. Searle.	
The Exchange National Bank of Spokane	6,000.00
By Edwin T. Coman, Pres.	
Shoshone Lumber Co.....	5,000.00
E. L. Carpenter, Pres.	

Idaho Timber Co.....	60,000.00
E. L. Carpenter, Treas.	
S. H. Hess.....	30,000.00
J. H. Stack.....	110,000.00
Genevieve Hess Tolerton.....	20,465.56
Mrs. M. A. Gibbs.....	12,725.00

(Endorsed) : Filed Feby. 19, 1917. L. L. Lewis,  
Referee.

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(Title of Court and Cause.)

No. 905

MOTION TO STRIKE PETITION OF EX-  
CHANGE NATIONAL BANK OF SPOKANE,  
WASHINGTON

Comes now, W. A. Armstrong, Trustee, by Robert Weinstein, his attorney, and now come Merrill Cox & Company and the Fort Dearborn National Bank, By Elmer H. Adams, their attorney, I. F. Searle and Minnie A. Gibbs by H. W. Canfield, their attorney, and S. H. Hess, Genevieve Hess Tolerton, the Idaho Timber Company and the Shoshone Lumber Company, by R. J. Danson, their attorney, who join in the motion to strike the petition of the Exchange National Bank of Spokane, Washington, from the records and files in this case, with the Trustee.

All of the foregoing parties move the court to strike the petition of the Exchange National Bank of Spokane, Washington, filed this 19th day of February, 1917, from the records and files of this court, for the following reasons and upon the following grounds:

First, it appears from said petition that the said petitioner has not any interest or claim in said estate;

Second, it appears from said petition that said petitioner is not asking any relief whatsoever on its behalf but that it is a mere interloper without any interest whatsoever in the estate of the Stack-Gibbs Lumber Company, as appears from said petition;

Third, it does not appear from said petition when the said Exchange National Bank delivered the notes referred to in said petition to the Mechanics Loan & Trust Company;

Fourth, that under the bankruptcy act only parties who have provable claims can appear and participate in the proceedings and that the petition fails to show that the petitioner has any provable claim whatsoever in this estate.

ROBERT WEINSTEIN,

Attorney for the Trustee.

ELMER H. ADAMS,

Attorney for Merrill Cox & Co., and Fort Dearborn National Bank.

H. W. CANFIELD,

Attorney for I. F. Searle and Minnie A. Gibbs.

DANSON, WILLIAMS & DANSON,

Attorneys for S. H. Hess, Genevieve Hess Tolerton, Idaho Timber Company and Shoshone Lumber Company.

Motion denied in open court this 19th day of February, 1917.

L. L. LEWIS, Referee.

Filed Feb. 19, 1917. L. L. Lewis, Referee.

(Title of Court and Cause.)

ANSWER TO PETITION OF EXCHANGE NATIONAL BANK OF SPOKANE,  
WASHINGTON

Comes now W. A. Armstrong, Trustee, by Robert Weinstein, his attorney, and the Fort Dearborn National Bank and Merrill Cox & Company by Elmer H. Adams their attorney, I. F. Searle and Minnie A. Gibbs by W. H. Canfield, their attorney and S. H. Hess, Genevieve Hess Tolerton, the Idaho Timber Company and the Shoshone Lumber Company by R. J. Danson, their attorney, and for answer to the petition of the Exchange National Bank, Spokane, Washington, answering says:

1st. That the respondent save any and all objection and exception which they may have to the many errors and imperfections in said petition set forth;

2d. That the respondent admits that the Exchange National Bank of Spokane was and now is a National Bank as averred;

3d. These respondents admit that the Mechanics Loan & Trust Company was and now is a corporation organized and existing under and by virtue of the laws of the State of Washington and was authorized on the 3d day of January, 1916, to transact business in the State of Idaho;

4th. These respondents admit that the Stack-Gibbs Lumber Company was a corporation carrying on the lumber business at Gibbs, Idaho, but as to what representations were made to the Exchange

National Bank by one C. D. Gibbs, these respondents deny that they have any knowledge or information thereof sufficient to form a belief and therefore respondents deny the same;

5th. These respondents admit that the contract referred to as Exhibit A in said petition was signed by the parties therein named;

6th. These respondents neither admit nor deny the allegations in paragraphs four and five of said petition as to the construction of certain paragraphs of said contract but refer to said contract itself;

7th. These respondents deny that the Mechanics Loan & Trust Company advanced or caused to be advanced to said Stack-Gibbs Lumber Company the sum of One Hundred Thousand Dollars or any part or portion thereof and deny that the said Exchange National Bank advanced any money whatsoever at the request of these respondents or either of them or the signers or the parties who signed said contract, Exhibit A, and these respondents further answering aver that any attempt to alter, amend, change, or extend the terms of said contract, Exhibit A, by any alleged contemporaneous oral agreement or arrangement is incompetent and immaterial;

8th. These respondents deny that the Mechanics Loan & Trust Company or the petitioner is entitled to any lien of any kind or character on any of the properties of effects or any of the moneys belonging to the Stack-Gibbs Lumber Company and now in the possession of the Trustee, or is entitled to the dividends of any of the parties who signed said Exhibit A.

9th. These respondents further deny that the petitioner delivered to the Mechanics Loan & Trust Company the said promissory notes referred to in said petition and authorized said Trust Company to file a claim herein in the manner and form of its amended claim;

10th. These respondents deny that the Mechanics Loan & Trust Company is entitled to the preference as prayed for or to the dividends as prayed for.

These respondents aver that the notes set forth in the petition are simply renewals of notes theretofore given for like amounts and the original notes when given were made by the Stack-Gibbs Lumber Company payable to the Mechanics Loan & Trust Company and the Mechanics Loan & Trust Company endorsed said notes without recourse and said notes were then delivered to said Exchange National Bank of Spokane, Washington, and the said Exchange National Bank upon the receipt of said notes did thereupon advance to the Stack-Gibbs Lumber Company and to no other party whomsoever the amount of said notes less the discount thereon and that the Mechanics Loan & Trust Company never received any consideration of any kind or character from the Exchange National Bank nor did it ever pay any consideration of any kind or character to the Stack-Gibbs Lumber Company for or on account of said original notes or any of them and upon said original notes maturing, renewal notes, being the notes set forth in the petition, were executed by the Stack-Gibbs Lumber Company and all the renewal notes



which were made payable to the Mechanics Loan & Trust Company were endorsed by the Mechanics Loan & Trust Company without recourse and delivered to the Exchange National Bank and said Exchange National Bank never paid any consideration of any kind or character to said Mechanics Loan & Trust Company nor did the said Mechanics Loan & Trust Company ever pay any consideration of any kind or character to the Stack-Gibbs Lumber Company for or on account of any of said renewal notes but all the consideration therefor passed directly from the Exchange National Bank of Spokane, Washington, to the Stack-Gibbs Lumber Company.

These respondents therefore deny that the Mechanics Loan & Trust Company is entitled to any preference of any kind or character as averred and aver that the owner of said notes is the Exchange National Bank of Spokane, Washington, and that it is not entitled to any lien of any kind or character upon any of the assets of the Stack-Gibbs Lumber Company or of any moneys now in the hands of the Trustee or to any dividend or dividends payable to any other creditor or creditors whomsoever and these respondents deny that the Exchange National Bank or the Mechanics Loan & Trust Company are entitled to any relief whatsoever and pray that the petition of said Exchange National Bank be dismissed at the cost of the petitioner.

W. A. ARMSTRONG,

Trustee.

ROBERT WEINSTEIN,

Attorney for Trustee.

ELMER H. ADAMS,

Attorney for Fort Dearborn Nat'l Bk. and Merrill  
Cox & Company.

H. W. CANFIELD,

Attorney for I. F. Searle and Minnie A. Gibbs.

DANSON, WILLIAMS & DANSON,

Attorney for S. H. Hess, Genevieve Hess Tolerton,  
Idaho Timber Co. & Shoshone Lumber Co.

State of Idaho,

County of Kootenai,—ss.

W. A. Armstrong, duly qualified and acting trustee of the above named corporation, being first duly sworn, deposes and says that he has read the above and foregoing answer and the same is true as he verily believes.

W. A. ARMSTRONG.

Subscribed and sworn to before me this 20th day of February, A. D. 1917.

LAWRENCE L. LEWIS,

Referee in Bankruptcy.

(Endorsed): Filed Feb. 20, 1917. L. L. Lewis,  
Referee.

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(Title of Court and Cause.)

ORDER ALLOWING CLAIM OF THE MECHANICS  
LOAN & TRUST COMPANY.

The amended proof of claim of the Mechanics Loan & Trust Company, a corporation (to which is attached its original proof of claim), and the petition of the Exchange National Bank of Spokane, Washington, submitted through their attorneys, Post, Russell, Carey & Higgins, together with the objec-

tions thereto, submitted by W. A. Armstrong, trustee herein; and, Merrill Cox & Company, Fort Dearborn National Bank, S. H. Hess, I. F. Searle, Mammie A. Gibbs, Genevieve H. Tolerton, Idaho Timber Company, and the Shoshone Lumber Company, by and through their respective attorneys, Robert Weinstein, Danson, Williams & Danson, H. W. Canfield and Elmer H. Adams; and, after a careful consideration of the evidence, both oral and documentary, and after argument of counsel both oral and upon brief, the Court being fully advised in the premises:

IT IS ORDERED that the several objections to the amended proof of claim of the Mechanics Loan & Trust Company be, and the same are, each and all, hereby overruled;

IT IS FURTHER ORDERED that the claim of the Mechanics Loan & Trust Company, the claimant herein, be, and the same is, allowed in the sum of \$101,162.91; for the reason that by virtue of the terms and conditions of the trust agreement, upon which this claim is based, and in the light of the evidence, said agreement became effective as to the foregoing objecting creditors who signed it. The evidence discloses that the sum of \$639,940.56 was considered by the signers of said trust agreement to be, at least, 90 per cent of the indebtedness of said bankrupt at the time of the signing of said trust agreement; and, that when Mrs. Genevieve H. Tolerton signed, then 90 per cent of the said indebtedness of the said bankrupt would have signed; that is, when Mrs. Tolerton signed, then the total signed indebtedness would aggregate the said sum of \$639,940.56.

Mrs. Tolerton signed the said trust agreement, according to the mutual understanding of all parties to it. It must, therefore, be apparent that said trust agreement became effective as to all parties to it with the signature of Mrs. Tolerton. IT IS ALSO APPARENT from the evidence that Sigmund Katz was not only to become a stockholder and an officer of the Stack-Gibbs Lumber Company, the bankrupt, herein; but, was, also, to represent the Mechanics Loan & Trust Company, the said claimant, trustee, under said trust agreement. In other words, he was to represent all interests under said trust agreement. The said Mechanics Loan & Trust Company, therefore, took possession of the property of the Stack-Gibbs Lumber Company by and through its representative the said Katz; and, in so far as the signers of said trust agreement are concerned fully complied with Section 3170 of the Idaho Revised Codes as to change of possession of the trust estate. It would appear, therefore, that the signing objectors have no just right to complain.

IT IS FURTHER ORDERED that the Mechanics Loan & Trust Company, the claimant herein, be paid all dividends or moneys that may hereafter be determined by the court to be due and payable to the following persons, or corporations signing said trust agreement, to-wit: Merrill Cox and Company; Fort Dearborn National Bank; I. F. Searle, First National Bank of Lincoln, Nebraska; Exchange National Bank of Spokane, Washington; Shoshone Lumber Company, Idaho Timber Company, S. H. Hess, J. K. Stack, Genevieve H. Tolerton

and Minnie A. Gibbs, until the full amount of \$101,162.91 is paid; said payment to be made before any moneys, whatsoever, of said estate be paid in liquidation or satisfaction as dividends or otherwise, of any of the claims of the above-named creditors and signers of said trust agreement, or any of them; that is that said sum be a first lien upon the dividends of said signing creditors until the same is fully paid.

IT IS FURTHER ORDERED that the claim of the Mechanics Loan & Trust Company, that said amount, to-wit, the sum of \$101,162.91, be adjudged a first lien upon all of the assets of said bankrupt be, and same is hereby denied; for the reason that the creditors of said bankrupt who did not sign said trust agreement are not bound thereby.

AND IT IS FURTHER ORDERED that the petition of the Exchange National Bank of Spokane, Washington, be and the same is, hereby granted with this modification, to-wit: that all sums hereinafter found to be due and payable to said Mechanics Loan & Trust Company shall be paid jointly with said Exchange National Bank of Spokane, Washington. This order is thus made by reason of the fact that there is no contention as between the bank and the trust company with reference to the receipt of the money; and, further, the evidence discloses that it was understood by the signers of the trust agreement under consideration that the Mechanics Loan & Trust Company, the trustee under said agreement, possessed but small capital and that the bank would advance whatever money was nec-



essary to the proper execution of the trust not to exceed in amount the sum of \$100,000.00. This, the bank did to the extent of said sum.

As to where the Mechanics Loan & Trust Company procured the money with which to carry out its trust under said trust agreement, or how it procured the same, is of no consequence here. And, especially is this true with reference to the signers of said trust agreement, the objectors, herein. Section 2 of the Trust Agreement is very broad with reference to the discretion to be given the trustee in the prosecution and management of the trust imposed; and, it would appear that the provision in said trust agreement "may use any and all of the trust estate as it thinks best" would sufficiently authorize and empower said trust company (if in the trustee's discretion, it thought best) to accept the notes of its *cestui qui* trust,—in other words, to borrow the necessary funds with which to carry out the said trust from the trust estate. This course was followed and the notes given by the Stack-Gibbs Lumber Company to its trustee, the said Mechanics Loan & Trust Company, were endorsed by said trustee, "without recourse", to the said Exchange National Bank of Spokane, Washington. The mere fact that said notes were endorsed "without recourse" to the bank would appear not to militate against the propriety or the legality of the transaction when the evidence discloses that the signers of said trust agreement, now the objectors fully understood that said bank would advance the necessary funds to carry into effect the trust.



Secombe v. Steele, 20 Howard, 94;  
Washington & Idaho R. R. Co. vs. Coeur  
d'Alene R. R. Co., 160 U. S., 77;  
Utley vs. Donaldson, 94 U. S., 29;  
Bailey vs. R. R. Co., 17 Wallace, 96;  
Joy vs. St. Louis, 138 U. S., 1;  
Insurance Co. vs. Dutcher, 95 U. S. 269;  
Randolph vs. Scruggs, 190 U. S., 533.

The purpose of the modification is to extend due and proper protection to both the bank, who advanced the money, and the trust company and its trust estate, who accepted it, and received the benefit thereof. The doctrine of subrogation does not appear to be applicable here.

Done at Coeur d'Alene, Idaho, in said District, this 28th day of May, A. D. 1917.

LAWRENCE L. LEWIS,  
Referee in Bankruptcy.

(Endorsed): Filed May 28, 1917. L. L. Lewis,  
Referee.

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(Title of Court and Cause.)  
PETITION FOR REVIEW.

To L. L. Lewis, Esq., Referee in Bankruptcy:

Your petitioners respectfully show:

1. That your petitioners are each a creditor of said Stack-Gibbs Lumber Company, the above named bankrupt, and each of said creditor's claim has been duly allowed herein.

2. That on the 28th day of May, 1917, an order, a copy of which is hereto annexed, was made and en-

tered herein; that such order was and is erroneous in that:

(a) Said referee had no jurisdiction to pass upon the claim of a preference or lien by the Mechanics Loan & Trust Company and by the Exchange National Bank, or by either of them, to the dividends due or which should be found to be due and declared to these petitioners or to either of them or to determine any rights whatsoever to the dividends to be declared herein as between the said claimant and these said petitioners.

(b) Said referee committed error in admitting any evidence of E. T. Coman as to conversations had between himself and John Fletcher, S. H. Hess, E. L. Carpenter, Bob Wetmore, I. F. Searle, C. D. Gibbs and H. J. Aaron, or any of them, and in admitting evidence of any conversations had by and between said E. T. Coman and either of said persons, or in the presence of any of said persons relative to what was said about what should constitute ninety (90%) per cent of the creditors of said bankrupt, relative to what was said about when said contract should take effect, relative to what was said as to what should be done under said contract, relative to what was said about Sigmund Katz coming to Spokane, or Gibbs, Idaho, relative to what was said about what he should do relative to what was said about the financial condition of the Mechanics Loan & Trust Company, and relative to what was said about the Exchange National Bank advancing any money or funds.

(c) Said referee committed error in basing his decision upon said incompetent testimony.

(d) Said referee committed error in refusing to sustain the objections made by your petitioners to the claim of the Mechanics Loan & Trust Company.

(e) Said referee committed error in refusing to sustain the objections made by your petitioners to the filing and allowance of the claim of the Exchange National Bank.

(f) Said referee committed error in overruling the several objections to the amended proof of claim of the Mechanics Loan & Trust Company.

(g) Said referee committed error in allowing the claim of the Mechanics Loan & Trust Company in the sum of \$101,162.91.

(h) Said referee committed error in allowing the claim of the Mechanics Loan & Trust Company for any sum.

(i) Said referee committed error in finding that the evidence discloses that the sum of \$639,940.56 was considered by the signers of said trust agreement to be at least ninety (90%) per cent of the indebtedness of said bankrupt at the time of signing said trust agreement, and that when Genevieve H. Tolerton signed, then ninety (90%) per cent of the said indebtedness of said bankrupt would have signed.

(j) Said referee committed error in finding that Sigmund Katz was not only to become a stockholder and an officer of the Stack-Gibbs Lumber Company, but was also to represent the Mechanics Loan & Trust Company.

(k) Said referee committed error in finding that said Mechanics Loan & Trust Company took possession of the property of the Stack-Gibbs Lumber Company by and through its representative, the said Sigmund Katz.

(l) Said referee committed error in finding that in so far as the signers of said trust agreement are concerned, Section 3170 of the Idaho Revised Codes as to charge of possession was fully complied with by said Mechanics Loan & Trust Company.

(m) Said referee committed error in ordering and adjudging that the Mechanics Loan & Trust Company be paid all dividends or moneys that may hereafter be determined by the court to be due and payable to the following persons or corporations signing said trust agreement, to-wit: Merrill Cox & Company, Fort Dearborn National Bank, I. F. Searle, First National Bank of Lincoln, Nebraska; Exchange National Bank of Spokane, Washington; Shoshone Lumber Company, Idaho Timber Company, S. H. Hess, J. K. Stack, Genevieve H. Tolerton and Minnie A. Gibbs until the full amount of \$101,162.91 was paid, and in ordering and adjudging that said sum be declared to be a first lien upon the dividends of said respective parties.

(n) Said referee committed error in granting the petition of the Exchange National Bank of Spokane, Washington, with the modification that all sums hereafter found to be due and payable to Mechanics Loan & Trust Company should be paid jointly with said Exchange National Bank of Spokane, Washington.

(o) Said referee committed error in finding that the evidence discloses that it was understood by the signers of the trust agreement under consideration that the Mechanics Loan & Trust Company possessed but small capital, but that the said Exchange National Bank would advance whatever money was necessary to the proper execution of the trust, not to exceed the sum of \$100,000.00, and in finding that said bank did this to the extent of said sum.

(p) Said referee committed error in allowing said claim of the Mechanics Loan & Trust Company in that the said claimant, Mechanics Loan & Trust Company is not the owner of the notes therein mentioned, and the evidence shows it has no claim whatsoever against the said bankrupt.

(q) Said referee committed error in allowing the claim of said Mechanics Loan & Trust Company in that the said claimant, Mechanics Loan & Trust Company, did not loan, advance or furnish to the above named bankrupt any sum of money whatsoever.

(r) Said referee committed error in allowing and ruling that the alleged contract attached to the claim of said Mechanics Loan & Trust Company as Exhibit "A" was signed by ninety (90%) per cent in amount of the indebtedness of the said bankrupt, in that the said alleged contract never became operative by reason of the failure to secure the signature of ninety (90%) per cent in amount of said creditors.

(s) Said referee committed error in holding and deciding that said trust agreement was and is valid.

WHEREFORE, your petitioners pray that the

said order of the referee may be reviewed by the Honorable Judge of this Court, and that said order be adjudged erroneous and void; that the referee certify the said questions to the court for that purpose and send up with his certificate all of the testimony taken on said issues.

Dated this 6th day of June, 1917.

W. A. ARMSTRONG,

Trustee in Bankruptcy.

By Robert Weinstein, his Attorney.

I. F. SEARLE,

By H. W. Canfield, his Attorney,

MERRILL COX & COMPANY,

By Ernest H. Adams and H. L. Cohn, its Attorneys.

S. H. HESS,

IDAHO TIMBER COMPANY,

SHOSHONE LUMBER COMPANY,

By Danson, Williams & Danson, their Attorneys.

(Duly verified.)

(Copy of order allowing claim of the Mechanics Loan & Trust Company, hereto attached.)

(Endorsed): Filed June 7, 1917. L. L. Lewis, Referee.

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(Title of Court and Cause.)

REPORT OF REFEREE IN BANKRUPTCY ON  
AN ORDER ALLOWING THE CLAIM OF  
THE MECHANICS LOAN & TRUST COM-  
PANY IN THE SUM OF \$101,162.91.

To the Honorable Frank S. Dietrich, District Judge:  
I, Lawrence L. Lewis, referee in bankruptcy, in



charge of the above-entitled proceedings, do hereby certify:

1.

That in the course of said proceedings, on, to-wit, the 28th day of May, 1917, an order was made and filed herein, allowing the claim of the Mechanics Loan & Trust Company in the sum of \$101,162.91.

2.

That on, to-wit, the 7th day of June, 1917, W. A. Armstrong, Trustee herein; and, I. F. Searle, Merrill Cox & Company, S. H. Hess, Idaho Timber Company, and the Shoshone Lumber Company, creditors of said bankrupt, feeling aggrieved thereat, filed, herein, their petition for review, which said petition was duly granted.

3.

That a full, true and correct summary of the proceedings upon which said order was made is as follows, to-wit:

That on, to-wit, the 27th day of December, 1916, the Proof of Claim of the Mechanics Loan & Trust Company was duly filed herein; that thereafter, on, to-wit, the 6th day of January, 1917 (by leave of court), the amended claim of the said Mechanics Loan & Trust Company was duly filed in said cause; that thereafter, on, to-wit, the said 8th day of January, 1917, W. A. Armstrong, trustee, herein, Merrill Cox & Company, Fort Dearborn National Bank, S. H. Hess, et al., filed in said cause their objections to the allowance of said claim; that thereafter, on, to-wit, the 19th day of February, 1917, the Petition of the Exchange National Bank of Spokane,

Washington, was filed herein; that thereafter, on, to-wit, the said 19th day of February, 1917, Motion to Strike the Petition of Exchange National Bank of Spokane, Washington, was duly filed, and in open court overruled; that thereafter, on, to-wit, the 20th day of February, 1917, the trustee herein, filed his answer to the petition of the Exchange National Bank of Spokane, Washington; that thereafter, in said course of proceedings said pleadings came regularly on to be heard, and after a careful consideration of the evidence, both oral and documentary, and after argument of counsel, the consideration of briefs, the Court being fully advised in the premises, the said order of the 28th day of May, 1917, was duly made and filed in said cause, to which said order, the petitioners, herein, duly excepted, and submit that such order was and is erroneous in certain particulars, which said particulars are each and all fully set forth in said petition for review.

THE PRECISE QUESTIONS SUBMITTED for decisions are these:

1. Under the provisions of the trust agreement now being considered, and in the light of the evidence (no fraud appearing), did said trust agreement become effective as to those who signed it? That is, did the contemplated "90 per cent in amount of indebtedness of the Lumber Company" sign said trust agreement?

2. If said trust agreement became effective as to those who signed it, did the Mechanics Loan & Trust Company, the trustee, thereunder, take such possession of the trust estate as to comply (either wholly or

substantially) with the provisions of Section 3170 of the Idaho Revised Codes, with reference to change of possession?

3. Under the provisions of the trust agreement (particularly Sections 1 and 2), and in view of the evidence, did the Mechanics Loan & Trust Company, as such trustee, possess the power and the authority to *proceed as it did proceed* to raise the \$100,000.00 with which to meet, speedily, the requirements of the trust imposed? That is, should those signing said trust agreement now be heard, in equity, to complain of the *particular method* employed by the trust company to procure the funds necessary to carry into effect the provisions of the trust?

4. Is the order here under review correct in point of law?

I hand up, herewith, for the information of the Judge, the following records and files, to-wit:

1. Petition for Review.
2. Order allowing claim of the Mechanics Loan & Trust Company;
3. Proof of Claim of the Mechanics Loan & Trust Company;
4. Amended Proof of Claim of the Mechanics Loan & Trust Company;
5. Objections of W. A. Armstrong, et al., to the allowance of said claim;
6. Petition of Exchange National Bank of Spokane, Washington;
7. Answer of trustee to Petition of Exchange National Bank of Spokane, Washington.

8. Record of Proceedings, and Copy of Exhibits.

9. Briefs of counsel for trustee; also, of Mechanics Loan & Trust Company.

I FURTHER CERTIFY that the above and foregoing are all the papers, records and files considered or pertaining to this review.

Done at Coeur d'Alene, Idaho, in said District, this 9th day of June, A. D. 1917.

LAWRENCE L. LEWIS,  
Referee in Bankruptcy.

(Endorsed): Filed June 21, 1917. W. D. McReynolds, Clerk.

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(Title of Court and Cause.)

No. 905

DECISION IN MATTER OF REVIEW OF ORDER ALLOWING CLAIM OF MECHANICS LOAN & TRUST COMPANY.

DIETRICH, DISTRICT JUDGE:

The most serious question is whether the trust agreement was signed by a sufficient number of creditors to give it validity. The referee did not find that as a matter of fact the signatures aggregated ninety per cent of the total indebtedness, nor do I think that if we regard the instrument alone, apart from the practical construction placed thereon by the parties in interest, it would be possible to make such a finding. While we might very reasonably exclude certain of the items embraced in the \$871,853.27, which the petitioners here contend is the correct footing, we cannot consistently exclude enough

to give the required ratio between the entire remaining indebtedness and that represented by the signatory creditors. But I am satisfied that all the parties acted upon the assumption that with the signature of Mrs. Tolerton the condition was fully complied with, and that the practical construction placed upon a writing at the time of and subsequently to its execution by the parties in interest may, and ordinarily should, be adopted by the court. From the record it is to be inferred that an emergency existed in the affairs of the debtor; that it had large assets, but that its credit was exhausted, and that it was doubtful whether it could meet its next pay rolls. The parties who are now objecting to the recognition of the trustee's claim were large creditors, whose interests were likely to be prejudiced in case of a receivership or bankruptcy proceeding. They were desirous that the debtor should continue to appear to be a solvent, going concern; hence the plan outlined in the trust agreement. But the very object of this plan might be frustrated at any moment, and for that reason they were anxious to have the agreement go into effect as soon as possible. They discussed the signatures that could probably be obtained, and made provision for taking up and satisfying intractable claims up to a certain amount. So far as appears, the trustees and its allied interests were not deeply concerned. The actual indebtedness held by the Exchange National Bank of Spokane was only \$6,000.00, and was relatively unimportant. I am wholly at a loss to understand how the trustee could have had any strong motive of self-interest



such as would induce it to assume a large risk in advancing the \$100,000.00 authorized by the agreement. What consideration did it have for putting this sum into a tottering business enterprise, unless it believed that the trust agreement, by which alone it could have protection, was in effect? Surely there must have been a clear understanding upon the subject, or an experienced business man of large affairs, such as it seems Mr. Coman was, would not have done what, without such an understanding, would be utterly foolhardy. Mr. Aaron, acting as the attorney for some of the largest creditors, doubtless had such an understanding, and expected the trustee to act upon it, for in any other view his conduct would seem to be quite indefensible from the standing of either honor or good morals. I have no doubt that he understood that the condition had been fully complied with, and assumed that the trustee would have the protection afforded by the trust agreement. Surely under the circumstances it was not contemplated that the trustee was at its peril to determine for itself whether the requisite ninety per cent had signed. For example, there appear to have been some controverted claims and other claims not disclosed by the records of the debtor. Was it to wait until the disputed claims were litigated or otherwise adjusted, or until the statute of limitations had fully run, in order that it might be sure that there was no undisclosed indebtedness, before it could safely proceed to execute the trust? When we come to examine the agreement we find that its spirit is out of accord with such a view. In paragraph nine it



is expressly provided that in the conduct and management of the trust estate the trustee should be reimbursed out of the estate for any claim which might be asserted against it, for damage done to third persons, even though such damage might have been caused by the negligence or misconduct of the trustee's officers, agents and employes. And in the fifteenth paragraph it is provided that if the trustee exercised reasonable care in the selection of its agents and employes it should not be held liable for any loss or damage from their negligence or default. Doubtless the objecting creditors all knew that the trustee was acting upon the assumption that the trust agreement was in effect, and that the condition under consideration had been fully complied with. They must have known that it was making advances upon the strength of such assumption, and yet they kept silent. No one now suggests that the trustee would have advanced \$100,000.00, or any considerable portion thereof, without the belief upon its part that it was protected by the provisions of the trust agreement. The advances, while perhaps not fully beneficial, were highly beneficial to the estate. I am not inclined to acquiesce in the view that, knowing or having good reason to believe that the trustee was proceeding upon the assumption that the trust agreement was in effect and that it was advancing moneys in furtherance of the object of the agreement, primarily to protect the debtor, but ultimately for the benefit of the creditors, these petitioners, after remaining silent so long, can now, after the trustee has, to its injury and to their advan-

tage, acted under the provisions of the agreement, be heard to say that it never went into effect.

When in the light of the surrounding circumstances and the conduct of the parties we consider the several items relied upon by the petitioners as constituting part of the indebtedness, we find little difficulty in eliminating most of them. It is clear beyond the need of discussion, I think, that in fact there was due to the Exchange National Bank of Spokane, only \$6,000.00. Even were it to be granted that the dealings between this bank and the debtor were usurious or otherwise illegal or immoral, it still remains true that \$6,000.00 was the maximum actual indebtedness, and that is the only fact with which we are here concerned.

There was in truth no overdraft at the Exchange National Bank of Coeur d'Alene. While in a sense the floating checks upon this bank aggregating \$15,431.07 represented indebtedness, they were issued in the expectation that current deposits would be sufficient to take care of them as they were presented. Such a species of indebtedness would naturally fluctuate from day to day, if not from hour to hour, and it is not to be assumed that the parties contemplated that it would be taken into account.

The debtor was under contract to deliver to divers persons lumber and logs to the aggregate value of \$79,852.62. From one point of view, of course, these obligations are the equivalent of an indebtedness in the strict sense of the word, but the trust agreement itself bears strong internal evidence that such obligations were not intended to be taken into

consideration as a part of the "indebtedness." Express reference is made to the largest of such contracts, one covering lumber of the value of \$32,948.40, with a provision for its specific performance by the delivery of the lumber called for. So far as appears, the debtor was having no trouble in meeting obligations of this character. It had sufficient assets, but its embarrassment was due to its inability to realize money thereon. Apparently it was able to meet its obligations under these contracts—which required no payments in money—and was ready to do so.

There is also an item of \$19,500.00 of indebtedness due to one Yeomans, who held lumber as security. Apparently the parties intended to treat secured claims as being in a distinct class. For example, there were also obligations secured by a trust deed, but no one is contending that they should be considered in computing the indebtedness covered by the trust agreement; and yet in a very real sense, of course, they constitute indebtedness.

Most difficult perhaps of all are the numerous items, disputed and undisputed, amounting to approximately \$40,000.00, which did not appear upon the debtor's books, but, as already suggested, it is hardly reasonable to suppose that anyone thought that the trustee must, at its peril, find out whether the debtor owed unrecorded debts. It is quite incredible that anyone could have been found willing to accept the trust upon such terms.

Thus far I have not referred to contention made by counsel "for creditors whose debts were incurred"

by the trustee. So far as I have been able to discover, the record before me does not disclose the amount or nature of such debts, or the names of the claimants. The contention in brief is, that, whether or not the trust agreement be deemed to have become binding upon the creditors who signed the same, it still remains true that it was signed by the trustee and by the debtor, and inasmuch as the latter undoubtedly knew that the trustee was proceeding upon the assumption that it was in effect, and was advancing moneys for its use and benefit upon such assumption, it is estopped from denying that the agreement became effective, and it, at least, is bound by the terms thereof. That being the case, it follows, so it is argued, that the trustee has a preferential claim against the estate for all moneys advanced, for the reason that the agreement was executed and went into effect more than four months prior to the adjudication, and being neither contrary to public policy nor violative of any law of the State of Idaho, it effectively operated to give to the trustee an equitable lien on the entire estate, and that such estate was taken over by the trustee in bankruptcy for the benefit of the general creditors, not only those who signed the agreement but all others, subject to such a lien. But as I view it, the record is not in a condition to warrant the consideration of this contention at the present juncture. Neither the creditors referred to in this brief, nor the trustee, is complaining of the order under review, by which the trustee was recognized as having a sort of equitable lien only upon the dividends to which

the signatory creditors may become entitled. Besides, as I understand, the general creditors other than those who signed the trust agreement have neither been made parties nor appeared in this proceeding, and obviously a recognition of the contention that the whole estate came into the bankruptcy court charged with this lien would prejudiciously affect the claims of such other creditors.

As to the question whether or not the trustee ever took actual possession of the property as directed by the trust agreement, I find upon examination of the record that just such possession was taken as was doubtless contemplated by the parties. In one aspect it is true the possession was colorable more than real, and my first impression was that the trustee had treated its obligations in this respect flip-pantly, if not in bad faith, but when I come to analyze the record I find that it was clearly the intention of the parties signing the agreement that as little notoriety as possible be given to the transaction, and that therefore it was desired by all that the trust deed be withheld from the records until an emergency should arise making it necessary to record it, and that insofar as practicable the trustee should keep itself in the background. Any doubt which might otherwise exist is dispelled by the "side agreement" or direction to the trustee, dated February 1, 1916, and introduced as Exhibit 39. Section 21 of the agreement itself provides that the agreement should not become effective until one Sigmund Katz, of Chicago, should be elected secretary and treasurer and a director of the debtor. But it should not be



seriously suggested that anyone ever intended that Katz was to represent the interests of the debtor. He was undoubtedly there for the purpose of representing the creditors, and especially these objecting creditors, for it is provided that "said Katz, or any other person that the majority in amount of the creditors of the lumber company (the debtor) who shall sign the within instrument, shall name, shall be elected and retained as such director and officer of such lumber company \* \* until the trust created by the within instrument shall be terminated." It is very plain that the desire was that to the public at large the debtor should have the appearance of carrying on the business, and that, as stated in the "side agreement," as little publicity as possible should be given to the fact that its property had passed into the control of a trustee. Katz, being a member of the board of directors, and being the secretary and treasurer of the company, could guard against any precipitate action attempted by the debtor, until the trustee could be notified and could record the agreement and assert its exclusive right of control under the terms thereof. Katz was to be in the active management of the property, and while thus having his hand upon the throttle of the machinery of the debtor corporation he formally acknowledged himself to be the agent and representative of the trustee. It is futile now to say that the trustee violated its obligations to the creditors because it kept from the general public knowledge of its relations to the property, and of Katz's relation to it. It was undoubtedly doing precisely what the creditors wanted it to do in this respect.



The discussion has perhaps already exceeded reasonable bounds, and it is not necessary that it should be further prolonged. I have examined the other questions of fact and of law discussed in the oral argument and in the exhaustive briefs which have been filed, but upon consideration they do not impress me as being of sufficient merit to warrant a reversal or modification of the referee's order. Accordingly it will be affirmed.

Filed July 26, 1917.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

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(Title of Court and Cause.)

No. 905

ORDER AFFIRMING THE REFEREE'S ORDER  
OF MAY 28, 1917, ALLOWING THE CLAIM  
OF MECHANICS LOAN & TRUST  
COMPANY.

After due consideration of the arguments and briefs on the review of the order of the Referee in Bankruptcy in the above entitled court and cause made and entered on the 28th day of May, 1917, at Coeur d'Alene, Idaho, allowing the claim of the Mechanics Loan & Trust Company, it is hereby ORDERED that the said order of the said Referee be and the same is hereby affirmed.

Dated this 6th day of August, A. D. 1917.

FRANK S. DIETRICH,  
Judge.

Endorsed: Filed Aug. 6, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 905

PETITION FOR SUPERVISION AND  
REVISION.

To the Honorable Judges of the Circuit Court of Appeals of the Ninth District:

Your petitioners, W. A. Armstrong, Trustee in Bankruptcy, I. F. Searle, Minnie A. Gibbs, and Merrill, Cox & Company, feeling themselves aggrieved by the orders, judgments and proceedings herein referred to and described, hereby petition the Court to superintend and revise the said orders and judgments, and in that connection and to that end, your petitioners respectfully show as follows:

## I.

That W. A. Armstrong is the duly appointed, qualified and acting Trustee in Bankruptcy herein; that Merrill Cox & Company is a corporation, having its principal place of business in the City of Chicago, Cook County, Illinois; that Minnie A. Gibbs is a resident of Spokane, Spokane County, Washington, and I. F. Searle is a resident of Lincoln, Lancaster County, Nebraska. That each of said petitioners are creditors of Stack-Gibbs Lumber Company, the above entitled bankrupt, who was duly adjudged a bankrupt on both the twenty-ninth day of July, 1916, and the third day of August, 1916, by the District Court of the United States for the District of Idaho, Northern Division, and that each of said petitioner have, in the manner provided by law, herein duly filed their proofs of claim.

II.

That after such adjudication the following proceedings were had in the case of said bankrupt, which have resulted prejudicial, as your petitioners verily believe, to the legal rights and remedies of your petitioners:

(a) That heretofore and on to-wit: the sixth day of January, 1917, the Mechanics Loan & Trust Company, a corporation, filed with the Referee in Bankruptcy, before whom this estate was pending, a pretended amended proof of claim against the bankrupt, wherein the said Mechanics Loan & Trust Company claimed an indebtedness from the bankrupt in the sum of one hundred one thousand, one hundred sixty-two dollars and ninety-one cents (\$101,162.91) and claimed that the consideration for the debt was that on or about February first, 1916, the bankrupt, being engaged in manufacturing lumber and in the general business of logging lumber and allied products, represented that the assets of the bankrupt and its associate corporations greatly exceeded the indebtedness that it owed but that it was unable to secure the means to pay the indebtedness that was then due and it was agreed between various creditors of said corporation that a plan be adopted for realizing upon the property of the bankrupt and paying its debts, and accordingly an agreement was entered into between various creditors, of which your petitioners were among, which your petitioners now set forth in its entirety, that the court may be properly advised:

This indenture, made this 1st day of February, in the year of our Lord, One Thousand Nine Hundred and Sixteen, by and between Stack-Gibbs Lumber Company, a corporation organized under the laws of Michigan, hereinafter referred to as the "Lumber Company," Dryad Lumber Company, a corporation organized under the laws of Washington, hereinafter referred to as the "Mill Company," C. D. Gibbs, of Spokane, Washington, hereinafter referred to as "Stockholder," and Mechanics Loan & Trust Company, a corporation organized and existing under the laws of Washington, hereinafter known as "Holder of the Trust Deed," parties of the first part, and Mechanics Loan & Trust Company, a corporation organized and existing under the laws of the State of Washington, hereinafter referred to as the "Trustee," a party of the second part and sundry creditors of the Lumber Company, and Mill Company, who have executed this instrument for the purpose of acceding to its terms and becoming bound thereby, who are hereinafter referred to as the "Creditors," party of the third part.

WITNESSETH :

That whereas, the Lumber Company and the Mill Company have heretofore been and are now engaged in the business of logging and the manufacture of lumber and allied products, and as well other business relating thereto, in the course of which business they have incurred indebtedness to divers individuals and corporations.

And whereas, the value of the property of the

Lumber Company and the Mill Company considerably exceeds their indebtedness, but nevertheless they are unable to obtain means to pay the indebtedness due and presently to become due.

And whereas, all the parties hereto are agreed that the plan herein outlined for realizing upon the property of the Lumber Company and the Mill Company and securing money to pay their presently due indebtedness and for satisfying their indebtedness is for the best interests of all concerned, and necessary to be adopted in order to avoid the heavy costs and expenses which would attend upon the realizing upon their property and the settlement of their indebtedness through receivership or bankruptcy proceedings;

Now Therefore, in consideration of the premises hereof and of other good and valuable consideration moving between the parties hereto, the said Stack-Gibbs Lumber Company and the said Dryad Lumber Company do hereby assign, transfer, set over, give, grant, bargain, sell, convey, remise, release and confirm unto the said Mechanics Loan & Trust Company, its successors or assigns, as Trustees as hereinafter set forth, all and singular the hereinafter *set forth, all and singular the hereinafter* described property, to-wit:

(Here was inserted description of various properties.)

*To have and to hold* to the said Trustee, its successors or assigns, to its and their use forever, but in trust, nevertheless, and for the uses and purposes following, to-wit:



1. The trustee shall forthwith take possession of the trust estate as of an estate in fee simple, and shall have and possess the same power to control, use, manage, and dispose of the same, and to incur all proper expenses in connection therewith, as in its judgment shall seem to the best interest of all the parties hereto, as though it was the absolute owner thereof.

2. The Trustee may, in its discretion, but shall not be required to, carry on the whole or any part of the business heretofore conducted by the Lumber Company and the Mill Company; may operate mills, cut logs, saw timbers, manufacture lumber into various forms, and transact any form of business heretofore conducted by the Lumber Company and Mill Company and for such purposes, or any other purpose which it deems proper and in realizing upon the trust estate, may use any and all of the trust estate as it thinks best, and in carrying on such business it may incur such expense as it thinks necessary to the proper conduct thereof, including necessary maintenance, replacement or supplying of new tools, machinery and apparatus.

3. The Trustee may employ such persons as it deems necessary, officers and employees of the Lumber Company and Mill Company, as well as others, for the proper management, use, enjoyment, and realization upon the trust estate, and may pay persons so employed reasonable compensations.

4. The Trustee shall collect such debts owing to the Lumber Company and Mill Company as are collectible in the exercise of ordinary diligence, and



may take security for, extend time of, compromise, or in any way it thinks proper settle any debts which in its opinion is of doubtful collectibility.

5. The Trustee shall realize upon the trust estate as rapidly as in its judgment it is possible to do so without unreasonable sacrifice thereof, and shall have power to sell and convey any and all of the trust estate at such prices and upon such terms as it considers proper, and its deed or bill of sale shall convey full and complete title to the purchaser free and clear of all right, title, claim or lien of the Lumber Company or of any other party hereto.

6. The Trustee shall receive as compensation, for its services as Trustee hereunder, the sum of Ten Thousand Dollars (\$10,000.00), provided the Trusteeship is terminated within two (2) years from the date hereof, and shall be entitled to reimbursement for sums paid for legal services in the administration of the Trust, including the preparation of this Instrument.

7. The Trustee may, but shall not be required to, pay the claim of any creditor of the Lumber Company and the Mill Company who does not desire to become or who is deemed inadvisable to have become a party to this instrument, except as modified in section 10 hereof.

8. The Trustee may institute, conduct or defend any suit or litigation which it considers advisable or necessary to the protection of the trust estate, and it shall be repaid from the trust estate all liability, cost and expense to which it may be put in the course of such litigation, including attorney fees.

9. If in the conduct and management of the trust estate damage is done third parties to whom the trustee is or may be held liable therefor, the Trustee shall be reimbursed and indemnified against any liability of claim therefor from the trust estate, whether such damage was caused by the negligence or misconduct of its officers, agents, employees or not.

10. The Trustee shall advance such sum of money as it deem necessary to meet the present payroll of the Lumber Company and the Mill Company and to discharge the claims of the creditors who do not execute this instrument as it may deem necessary or requisite to protect the trust estate, not to exceed, however, the sum of One Hundred Thousand (\$100,000) Dollars, and the Trustee shall have a first and preference claim upon said Trust Estate for the amount of such advancement and the same shall be repaid to it out of the first proceeds of sales of the trust property or any part thereof or the first proceeds of the collected accounts or bills receivable, together with interest thereon from the date of such advancement at the rate of six per cent per annum.

11. Payments made by the Trustee under the provisions of Sections 1 to 10 inclusive hereof, with interest from the time of payment to reimbursement, as well as the compensation of the Trustee, shall be deemed maintenance charges of the trust estate in preference to any other claims thereupon.

12. The Lumber Company and the Mill Company may execute notes or may renew existing notes

or renew renewal notes for their indebtedness and such other notes or renewals shall have the same right hereunder as have the claims of the creditors in their present form.

13. The Trustee may, but shall not be required to pay interest accruing upon the interest bearing claims of the creditors, if it has the money in the trust estate which it deems not required for other purposes; provided, however, that any such interest payment shall be pro-rated among all the creditors holding interest bearing claims.

14. The creditors agree that neither this instrument nor anything done or to be done in pursuance of its provisions shall be construed as a preference to any creditor, or any act of bankruptcy, but that it is entered into in pursuance of a plan which is considered equitable between all the creditors of the Lumber Company and the Mill Company and which will secure the most advantageous disposal of their property for the benefit of their creditors. The creditors likewise agree that while this instrument remains in effect and no provision hereof is violated, they will not sue the Lumber Company or the Mill Company in any court on their demands nor commence any bankruptcy or receivership proceedings against them. They understand and agree, also, that the Lumber Company and the Mill Company would not have executed this instrument and that the Trustee would not have consented to act as Trustee hereunder or to assume the obligations herein assumed by it, except upon the express agreement of the creditors in this section contained.

15. The Trustee may select and employ in and about the execution of the trust suitable agents and attorneys and it shall not be held liable for any neglect, omission, mistake or misconduct of any such agent or attorney, if reasonable care has been exercised in the selection, and shall not be held liable for any loss or damage not caused by its own negligence or default. Neither shall it be held to have agreed to pay or be liable for any loss or damage occasioned by its failure to pay any tax, assessment, indebtedness or lien upon the trust estate save and except the taxes, indebtedness and charges which in the tenth section hereof it has expressly agreed to pay.

16. It is understood that the Central Warehouse Lumber Company of Minneapolis, Minnesota, has advanced to the Lumber Company a sum approximately Thirty-two Thousand (\$32,000.00) Dollars under an agreement whereby the amount of such advancement shall be repaid in whole or in part in lumber, and it is agreed that said Trustee shall recognize said contract and carry out and perform the terms thereof notwithstanding any contrary provision herein contained. It is also agreed that if there should be any other outstanding contracts of similar nature entered into by the Lumber Company or the Mill Company, the Trustee may, in its discretion and according to its best judgment, carry out the terms thereof or make such adjustment thereof as to it may seem just and proper.

17. If at any time during the continuance of the trust any tax, charge or indebtedness shall ac-

crue which would be a lien or charge upon the trust estate superior to the claims of the parties hereto and which, in the opinion of the Trustee, it is to the best interest of the parties hereto be paid, then the Trustee may, but shall not be required to, pay such tax, charge or indebtedness and thereupon the amount so paid, together with interest thereon at the rate of six per cent per annum from the date of payment shall become a charge upon the trust estate and shall be paid out of the first money available therefrom.

18. The trust hereby created shall terminate (a) upon the payment of all the indebtedness owing by the Lumber Company to the parties to this agreement; (b) upon agreement of the creditors representing at least a majority in amount of the indebtedness of the Lumber Company and who shall have signed the within agreement, to the effect that the trust shall be terminated and the trust estate reconveyed to the Lumber Company and the Mill Company without liability on the part of the Trustee of (c) upon the disposition of the entire trust estate and the application of its proceeds as herein provided. The creditors signing the within instrument shall make out and file with the Trustee their claims against the Lumber Company and the Mill Company within Sixty (60) days from notice of the acceptance of the within trust by the Trustee. Copies of said claim shall be sent by the Trustee to the Lumber Company and the Mill Company and to each creditor who shall have signed the within instrument and if no objection to same be filed with



the Trustee within Thirty (30) days thereafter, then such claim shall be allowed by the Trustee as filed. The proceeds of the trust estate, after reimbursing the Trustee for advancements, expenses, compensations and other claims mentioned herein, shall be distributed pro rata among the Creditors of the Lumber Company and the Mill Company. Upon the termination of the trust and an accounting by the Trustee with the Lumber Company and the Mill Company and the creditors, and the reimbursement of the Trustee for all sums, expenses or loaned by it hereunder its trust estate shall be reconveyed to the Lumber Company and the Mill Company.

19. The compensation of the Trustee and the expenses and advancements made by its shall constitute a charge upon the trust estate superior to the indebtedness of any party secured hereby and the Trustee may not be removed nor be deprived of the Trust estate in any manner until the payment of its compensation, expenses and advancements have been fully provided for; provided, that upon the failure of the Trustee to accept the trust hereunder and upon its refusal to act after its acceptance, the creditors who have signed this instrument, holding a majority in amount of the indebtedness of the Lumber Company, may by deed appoint a new Trustee.

The Lumber Company and Mill Company agree that they will execute such further and additional conveyances, undertakings and agreements as shall be necessary to fully effectuate the intent of this instrument and vest title to all of their property



in the Trustee, in trust for the uses and purposes herein provided.

Several copies hereof may be executed and delivered and each copy which is duly executed and delivered shall be treated for all purposes as an original instrument.

20. This instrument shall not take effect until creditors representing ninety per cent in amount of the indebtedness of the Lumber Company have attached their signatures hereto and until the holder of the Trust Deed on the property of the Mill Company, which Trust Deed is due, has extended same for a period of two years from date; provided, however, that the debt represented by the Trust Deed shall pro rate with the other creditors who have signed the within instrument as to all distribution of dividends after one year from date hereof.

21. It is further agreed that this instrument shall not take effect until said stockholders shall cause a meeting of the stockholders of said Lumber Company and said Mill Company, to be held immediately at which the resignations of the present Secretaries and Treasurers of the two companies shall be obtained and also the resignation of one of the Directors of each of said companies and that Siegmund Katz, of Chicago, Illinois, shall be elected by said stockholders of said Lumber Company and said Mill Company, a director and Secretary of each of said companies, and provided further, that said Katz or any other person that the majority in amount of the creditors of the Lumber Company who shall sign the within instrument, shall name, shall be

elected and retained as such Director and officer of such Lumber Company and such Mill Company until the Trust created by the within instrument shall be terminated.

It is specifically agreed that the claim of the Shoshone Lumber Company for the sum of Five Thousand (\$5000) Dollars and interest represents the purchase price of timber on which a vendors lien is retained by the said Shoshone Lumber Company, until the payment of said purchase price and it is agreed that said claim will be paid by the Trustee within six (6) months from date hereof as a preferred claim.

23. It is further agreed that the claim of the Idaho Timber Company is secured by the ownership of the following mark placed upon certain White Pine and Spruce logs landed upon Marble Creek: (Certain marks here described.) Any such logs hereafter delivered to the Lumber Company or to the Mill Company shall be paid for by the Trustee at the rate of Sixteen Dollars per thousand feet board measure for White Pine logs and six dollars per thousand feet for Spruce logs and the amount thereof shall be deducted from the claim of the Idaho Timber Company. The balance of said claim shall pro rate with the other creditors in accordance with the terms of this instrument.

In witness whereof the parties hereunto have set their hands and affixed their corporation seals the day and year herein first written.

This was first signed by the bankrupt, Dryad Lumber Company, and Mechanics Loan & Trust

Company, and under separate endorsement was signed as follows:

The undersigned creditors of the Stack-Gibbs Lumber Company and the Dryad Lumber Company to the amount set opposite their names, hereby become parties to and agree to all the terms and conditions of the foregoing deed of trust.

Dated February 1st, 1916.

<i>Creditors.</i>	<i>Amount of Claim.</i>
Merrill Cox & Co.....	\$221,250.00
Fort Dearborn National Bank.....	107,000.00
I. F. Searle.....	55,000.00
First National Bank, Lincoln.....	12,500.00
Exchange National Bank, Spokane.....	6,000.00
Shoshone Lumber Company.....	5,000.00
Idaho Timber Company.....	60,000.00
S. H. Hess.....	30,000.00
J. K. Stack.....	110,000.00
Genevieve Hess Tolerton.....	20,465.56
Mamie A. Gibbs.....	12,725.00

In said amended proof of claim the said claimant alleged that pursuant to said plan and agreement as outlined in said Trust Agreement between the dates of February 9th, 1916, and May 11th, 1916, the said Mechanics Loan & Trust Company advanced to the Bankrupt the sum of \$100,000.00, which said amount was evidenced by notes payable to the said claimant.

The claimant then alleged that but for the agreement that has heretofore been set out and the signing of the same by the persons and corporations mentioned therein, it would not have advanced \$100,-

000.00 but that said sum was advanced only upon the faith and credit of said Trust Agreement and the signatures thereto.

(b) That thereafter and on the 6th day of January, 1917, your petitioners and other creditors of this estate, filed with the Referee in Bankruptcy their objections to said claim and in said objections urged and pointed out among other things that said court had no jurisdiction to determine the rights of the said claimant to any dividends thereafter to be declared upon the claims of the objecting creditors or any other creditors of the bankrupt. They further objected on the grounds that the claimant was not the owner of the notes upon which said claim was based, as set out in said amended proof of claim; nor had the Mechanics Loan & Trust Company loaned, advanced or furnished to the bankrupt said sum or sums. They further alleged that said trust agreement was never consummated nor executed nor was the same ever signed by ninety per cent of the amount of the indebtedness of said bankrupt as was contemplated in said trust agreement nor did the Mechanics Loan & Trust Company extend its Trust Deed as in said trust agreement was contemplated. It was further alleged that said Mechanics Loan & Trust Company did not advance \$100,000.00 or any part thereof to the bankrupt under the terms of said contract or at all nor did the said Mechanics Loan & Trust Company take over possession of the property mentioned in said contract or perform any other act under and by virtue thereof. It alleged that the said Mechanics Loan

& Trust Company, contrary to the provisions of said contract, participated in and caused the bankruptcy proceedings herein; negligently failed to collect the debts and obligations of said Company and has otherwise been guilty of neglect of the trust imposed. That the signers to said agreement were not bound by said agreement by reason of the false and fraudulent representations made to them and that the claimant was not authorized and had no authority under the laws of the State of Idaho to contract or act as alleged in its amended proof of claim, nor could it maintain its position for the reason that it had not complied with the requirements of the State of Idaho with reference to conducting business in said state.

(c) That thereafter and on to-wit: the 19th day of February, 1917, the Exchange National Bank of Spokane, Washington, filed its petition in said proceedings wherein it alleged that on or about the 1st day of February, 1916, the bankrupt, by its officers and agents represented that the assets of the bankrupt greatly exceeded the indebtedness of said company but that it was unable to obtain money to pay its present due indebtedness and set forth the execution of the trust agreement hereinbefore set forth in this petition. It alleged that the Mechanics Loan & Trust Company under said Trust Agreement furnished the sum of \$100,000.00 which was evidenced by notes executed and made payable to said Mechanics Loan & Trust Company and to the said Exchange National Bank and claiming that all moneys furnished by the said Mechanics Loan & Trust Com-



pany was in truth and in fact furnished by the Exchange National Bank and not by the Mechanics Loan & Trust Company. It further alleged that before the filing of the amended claim herein for the sum of \$101,162.91 by the Mechanics Loan & Trust Company, the said Exchange National Bank delivered to the said Mechanics Loan & Trust Company the promissory notes referred to in its claim going to make up the amount of said claim and that the said bank authorized the said Trust Company to file the claim in its own name and in said petition attempted to ratify the action taken by the said Mechanics Loan & Trust Company in filing its amended proof of claim; stating that said petition was filed for the purpose of removing any doubt as to the person who was entitled to have said claim allowed and to remove any technical objection to the claim of the said Trust Company. It prayed for no relief save and except that the claim of the Mechanics Loan & Trust Company be allowed and that it have a preference as prayed.

(d) Thereafter and on the 19th day of February, 1917, the petitioners herein moved to strike the petition of the said bank because it appeared from the petition that it did not have or claim any interest in the estate; was not seeking any relief and it did not appear from the petition that the said bank had delivered the notes referred to in its said petition to the Mechanics Loan & Trust Company, and for the further reason that under the Bankruptcy Act only persons having provable claims can appear and participate in the proceedings, and that the petition



failed to show that the petitioner had any such provable claim.

(e) Thereafter the Referee in Bankruptcy, before whom this estate was pending, denied said motion to strike.

(f) Thereafter, and on the 20th day of February, 1916, these petitioners filed their answer to the petition of the Exchange National Bank, denying that the Mechanics Loan & Trust Company advanced or caused to be furnished the said sums as set out therein; denied that the Exchange National Bank advanced any money on the request of the petitioners or either of them and denied that the Mechanics Loan & Trust Company or the said Bank is entitled to any lien of any kind or character. They denied that the Bank delivered to the Mechanics Loan & Trust Company the promissory notes referred to in the said petition and denied that the Mechanics Loan & Trust Company is entitled to the preference as prayed for or the dividends.

In said answer the petitioners herein averred that the notes set forth in the petition were simply renewal notes and given for like amounts and that the original notes were made to the Mechanics Loan & Trust Company and by it endorsed without recourse to the said Exchange National Bank and that the said bank, upon receipt of said notes advanced to the bankrupt and to no other person the amount thereof less its discount and that the Mechanics Loan & Trust Company never received any consideration of any kind or character from the said bank

nor did it ever pay any consideration of any kind or character to the said bankrupt for or on account of said original notes; that upon said original notes maturing, renewal notes, being the notes set forth in the said bank's petition, were executed, and although all of the renewal notes were made payable to the said Mechanics Loan & Trust Company and were endorsed by the said Mechanics Loan & Trust Company and delivered to the said bank, the said bank never paid any consideration of any kind or character to the said Mechanics Loan & Trust Company, nor did the said Trust Company ever pay any consideration therefor to the said bankrupt; that all of the consideration therefor passed directly from the Exchange National Bank to the bankrupt.

Accordingly the petitioners herein denied that the Trust Company was entitled to any preference or lien and prayed that the petition of said bank be dismissed.

(g) Thereafter, the amended claim of the Mechanics Loan & Trust Company, the petition of the Exchange National Bank of Spokane and the objections filed to the allowance of said claim, together with the answer to said petition, came on regularly for hearing before the Referee in Bankruptcy and the testimony of various witnesses was taken and after argument of counsel, the said Referee on, to-wit: May 28th, 1917, made an order allowing the said claim of the said Mechanics Loan & Trust Company, in practically its entirety.

(h) Thereafter, and on to-wit: the 7th day of June, 1917, these petitioners filed their petition for

review to the District Judge and in said petition it was set forth the following reasons why said order of the Referee be adjudged erroneous and void:

1. The Referee had no jurisdiction to pass upon the claim of a preference or lien by the Mechanics Loan & Trust Company and by the Exchange National Bank or by either of them to the dividends due or which should be found due and declared to these petitioners and other creditors, or to determine any rights whatever to the dividends to be declared herein as between the claimants and the petitioners.

2. That the referee committed error in admitting the evidence of E. T. Coman as to conversations had between himself and John Fletcher, S. H. Hess, and other persons, or any of them and in admitting in evidence any conversations had between the said Coman and either of said persons or in the presence of any of said persons relative to what was said about what should constitute 90 per cent of the creditors of said bankrupt and relative to what was said about when said contract should take effect and relative to what was said as to what should be done under said contract and relative to what was said about Siegmund Katz coming to Spokane or Gibbs, Idaho, and relative to what was said about what he should do and the financial condition of the said Mechanics Loan & Trust Company, and relative to what was said about the said Exchange National Bank advancing any money or funds.

3. That the Referee based his decision upon incompetent testimony.

4. That he committed error in refusing to sustain the objections of the petitioners to the claim of Mechanics Loan & Trust Company.

5. That he committed error in not sustaining the objections of the petitioners to the filing and allowance of claim of the Exchange National Bank.

6. That he committed error in overruling the various objections to the claim of the Mechanics Loan & Trust Company.

7. That he committed error in allowing the claim of the Mechanics Loan & Trust Company for the sum of \$101,162.91 or for any sum.

8. That he committed error in finding that the evidence disclosed that the sum of \$639,940.56 was considered by the signers of said trust agreement to be at least 90 per cent of the indebtedness of the bankrupt when the agreement was signed and that when Genevieve H. Tolerton signed, that such signature would constitute 90 per cent.

9. That he committed error in finding that Siegmund Katz was not only to become a stockholder and an officer of the bankrupt but was also to represent the Mechanics Loan & Trust Company.

10. That he committed error in finding that the said Mechanics Loan & Trust Company ever took possession of the property of the bankrupt.

11. That he committed error in finding that Section 3170 of the Idaho Revised Codes as to change of possession was fully complied with by the said Mechanics Loan & Trust Company.

12. That he committed error in ordering and adjudging that the Mechanics Loan & Trust Company

be paid all dividends and moneys that may thereafter be determined by the court to be due and payable to Merrill Cox & Company, I. F. Searle and Minnie A. Gibbs and other creditors of the bankrupt and in ordering and adjudging that until the full sum of \$101,162.91 was paid that said sum be declared a first lien upon the dividends of the respective parties.

13. That he committed error in granting the petition of the Exchange National Bank with the modifications that all sums found to be due should be paid jointly between the Mechanics Loan & Trust Company and the Exchange National Bank.

14. That he committed error in finding that the evidence discloses that it was understood by the signers of the trust agreement that the Mechanics Loan & Trust Company possessed but small capital but that the Exchange National Bank would advance whatever money was necessary to the proper execution of the trust not to exceed the sum of \$100,000.00 and in finding that the bank did this to the extent of said sum.

15. That he committed error in allowing the claim of the Mechanics Loan & Trust Company in that the said Mechanics Loan & Trust Company is not the owner of the notes therein mentioned and has no claim whatsoever against the said bankrupt.

16. That he committed error in allowing said claim of the Mechanics Loan & Trust Company for the reason that they did not advance, loan or furnish the bankrupt any sum of money whatsoever.



17. That he committed error in allowing and ruling that the alleged contract attached to the claim of the Mechanics Loan & Trust Company as Exhibit "A" was signed by 90 per cent in amount of the indebtedness of the bankrupt, for the reason that the said contract never became operative by reason of the failure to secure the signatures of 90 per cent in amount of said creditors.

18. That he committed error in holding and deciding that said trust agreement was and is valid.

(i) That thereafter the said Petition for Review came on regularly for hearing before the Honorable Frank S. Dietrich, Judge of said Court and on to-wit: July 26, 1917, Judge Dietrich filed his opinion in writing, as follows:

"The most serious question is whether the trust agreement was signed by a sufficient number of creditors to give it validity. The referee did not find that as a matter of fact the signatures aggregated ninety per cent of the total indebtedness, nor do I think that if we regard the instrument alone, apart from the practical construction placed thereon by the parties in interest, it would be possible to make such a finding. While we might very reasonably exclude certain of the items embraced in the \$871,-853.27, which the petitioners here contend is the correct footing, we cannot consistently exclude enough to give the required ratio between the entire remaining indebtedness and that represented by the signatory creditors. But I am satisfied that all the parties acted upon the assumption that with the signature of Mrs. Tolerton the condition was fully com-

plied with, and that the practical construction placed upon a writing at the time of and subsequently to its execution by the parties in interest may, and ordinarily should, be adopted by the court. From the record it is to be inferred that an emergency existed in the affairs of the debtor; that it had large assets, but that its credit was exhausted, and that it was doubtful whether it could meet its next pay rolls. The parties who are now objecting to the recognition of the trustee's claim were large creditors, whose interests were likely to be prejudiced in case of a receivership or bankruptcy proceeding. They were desirous that the debtor should continue to appear to be a solvent, going concern; hence the plan outlined in the trust agreement. But the very object of this plan might be frustrated at any moment, and for that reason they were anxious to have the agreement go into effect as soon as possible. They discussed the signatures that could probably be obtained, and made provision for taking up and satisfying intractable claims up to a certain amount. So far as appears, the trustees and its allied interests were not deeply concerned. The actual indebtedness held by the Exchange National Bank of Spokane was only \$6,000.00, and was relatively unimportant. I am wholly at a loss to understand how the trustee could have had any strong motive of self-interest such as would induce it to assume a large risk in advancing the \$100,000.00 authorized by the agreement. What consideration did it have for putting this sum into a tottering business enterprise, unless it believed that the trust agreement, by which alone

it could have protection, was in effect? Surely there must have been a clear understanding upon the subject, or an experienced business man of large affairs, such as it seems Mr. Coman was, would not have done what, without such an understanding, would be utterly foolhardy. Mr. Aaron, acting as the attorney for some of the largest creditors, doubtless had such an understanding, and expected the trustee to act upon it, for in any other view his conduct would seem to be quite indefensible from the standing of either honor or good morals. I have no doubt that he understood that the condition had been fully complied with, and assumed that the trustee would have the protection afforded by the trust agreement. Surely under the circumstances it was not contemplated that the trustee was at its peril to determine for itself whether the requisite ninety per cent had signed. For example, there appear to have been some controverted claims and other claims not disclosed by the records of the debtor. Was it to wait until the disputed claims were litigated or otherwise adjusted, or until the statute of limitations had fully run, in order that it might be sure that there was no undisclosed indebtedness, before it could safely proceed to execute the trust? When we come to examine the agreement we find that its spirit is out of accord with such a view. In paragraph nine it is expressly provided that in the conduct and management of the trust estate the trustee should be reimbursed out of the estate for any claim which might be asserted against it, for damage done to third persons, even though such damage might have been

caused by the negligence or misconduct of the trustee's officers, agents and employes. And in the fifteenth paragraph it is provided that if the trustee exercised reasonable care in the selection of its agents and employes it should not be held liable for any loss or damage from their negligence or default. Doubtless the objecting creditors all knew that the trustee was acting upon the assumption that the trust agreement was in effect, and that the condition under consideration had been fully complied with. They must have known that it was making advances upon the strength of such assumption, and yet they kept silent. No one now suggests that the trustee would have advanced \$100,000.00, or any considerable portion thereof, without the belief upon its part that it was protected by the provisions of the trust agreement. The advances, while perhaps not fully beneficial, were highly beneficial to the estate. I am not inclined to acquiesce in the view that, knowing or having good reason to believe that the trustee was proceeding upon the assumption that the trust agreement was in effect and that it was advancing moneys in furtherance of the object of the agreement, primarily to protect the debtor, but ultimately for the benefit of the creditors, these petitioners, after remaining silent so long, can now, after the trustee has, to its injury and to their advantage, acted under the provisions of the agreement, be heard to say that it never went into effect.

When in the light of the surrounding circumstances and the conduct of the parties we consider the several items relied upon by the petitioners as

constituting part of the indebtedness, we find little difficulty in eliminating most of them. It is clear beyond the need of discussion, I think, that in fact there was due to the Exchange National Bank of Spokane, only \$6,000.00. Even were it to be granted that the dealings between this bank and the debtor were usurious or otherwise illegal or immoral, it still remains true that \$6,000.00 was the maximum actual indebtedness, and that is the only fact with which we are here concerned.

There was in truth no overdraft at the Exchange National Bank of Coeur d'Alene. While in a sense the floating checks upon this bank aggregating \$15,431.07 represented indebtedness, they were issued in the expectation that current deposits would be sufficient to take care of them as they were presented. Such a species of indebtedness would naturally fluctuate from day to day, if not from hour to hour, and it is not to be assumed that the parties contemplated that it would be taken into account.

The debtor was under contract to deliver to divers persons lumber and logs to the aggregate value of \$79,852.62. From one point of view, of course, these obligations are the equivalent of an indebtedness in the strict sense of the word, but the trust agreement itself bears strong internal evidence that such obligations were not intended to be taken into consideration as a part of the "indebtedness." Express reference is made to the largest of such contracts, one covering lumber of the value of \$32,948.40, with a provision for its specific performance by the delivery of the lumber called for. So far as



appears, the debtor was having no trouble in meeting obligations of this character. It had sufficient assets, but its embarrassment was due to its inability to realize money thereon. Apparently it was able to meet its obligations under these contracts—which required no payments in money—and was ready to do so.

There is also an item of \$19,500.00 of indebtedness due to one Yeomans, who held lumber as security. Apparently the parties intended to treat secured claims as being in a distinct class. For example, there were also obligations secured by a trust deed, but no one is contending that they should be considered in computing the indebtedness covered by the trust agreement; and yet in a very real sense, of course, they constitute indebtedness.

Most difficult perhaps of all are the numerous items, disputed and undisputed, amounting to approximately \$40,000.00, which did not appear upon the debtor's books, but, as already suggested, it is hardly reasonable to suppose that anyone thought that the trustee must, at its peril, find out whether the debtor owed unrecorded debts. It is quite incredible that anyone could have been found willing to accept the trust upon such terms.

Thus far I have not referred to contention made by counsel "for creditors whose debts were incurred" by the trustee. So far as I have been able to discover, the record before me does not disclose the amount or nature of such debts, or the names of the claimants. The contention in brief is, that, whether or not the trust agreement be deemed to have become

binding upon the creditors who signed the same, it still remains true that it was signed by the trustee and by the debtor, and inasmuch as the latter undoubtedly knew that the trustee was proceeding upon the assumption that it was in effect, and was advancing moneys for its use and benefit upon such assumption, it is estopped from denying that the agreement became effective, and it, at least, is bound by the terms thereof. That being the case, it follows, so it is argued, that the trustee has a preferential claim against the estate for all moneys advanced, for the reason that the agreement was executed and went into effect more than four months prior to the adjudication, and being neither contrary to public policy nor violative of any law of the State of Idaho, it effectively operated to give to the trustee an equitable lien on the entire estate, and that such estate was taken over by the trustee in bankruptcy for the benefit of the general creditors, not only those who signed the agreement but all others, subject to such a lien. But as I view it, the record is not in a condition to warrant the consideration of this contention at the present juncture. Neither the creditors referred to in this brief, nor the trustee, is complaining of the order under review, by which the trustee was recognized as having a sort of equitable lien only upon the dividends to which the signatory creditors may become entitled. Besides, as I understand, the general creditors other than those who signed the trust agreement have neither been made parties nor appeared in this proceeding, and obviously a recognition of the conten-

tion that the whole estate came into the bankruptcy court charged with this lien would prejudicially affect the claims of such other creditors.

As to the question whether or not the trustee ever took actual possession of the property as directed by the trust agreement, I find upon examination of the record that just such possession was taken as was doubtless contemplated by the parties. In one aspect it is true the possession was colorable more than real, and my first impression was that the trustee had treated its obligations in this respect flippanantly, if not in bad faith, but when I come to analyze the record I find that it was clearly the intention of the parties signing the agreement that as little notoriety as possible be given to the transaction, and that therefore it was desired by all that the trust deed be withheld from the records until an emergency should arise making it necessary to record it, and that insofar as practicable the trustee should keep itself in the background. Any doubt which might otherwise exist is dispelled by the "side agreement" or direction to the trustee, dated February 1, 1916, and introduced as Exhibit 39. Section 21 of the agreement itself provides that the agreement should not become effective until one Sigmund Katz, of Chicago, should be elected secretary and treasurer and a director of the debtor. But it should not be seriously suggested that anyone ever intended that Katz was to represent the interests of the debtor. He was undoubtedly there for the purpose of representing the creditors, and especially these objecting creditors, for it is provided that "said Katz, or any

other person that the majority in amount of the creditors of the lumber company (the debtor) who shall sign the within instrument, shall name, shall be elected and retained as such director and officer of such lumber company \* \* until the trust created by the within instrument shall be terminated." It is very plain that the desire was that to the public at large the debtor should have the appearance of carrying on the business, and that, as stated in the "side agreement," as little publicity as possible should be given to the fact that its property had passed into the control of a trustee. Katz, being a member of the board of directors, and being the secretary and treasurer of the company, could guard against any precipitate action attempted by the debtor, until the trustee could be notified and could record the agreement and assert its exclusive right of control under the terms thereof. Katz was to be in the active management of the property, and while thus having his hand upon the throttle of the machinery of the debtor corporation he formally acknowledged himself to be the agent and representative of the trustee. It is futile now to say that the trustee violated its obligations to the creditors because it kept from the general public knowledge of its relations to the property, and of Katz's relation to it. It was undoubtedly doing precisely what the creditors wanted it to do in this respect.

The discussion has perhaps already exceeded reasonable bounds, and it is not necessary that it should be further prolonged. I have examined the other questions of fact and of law discussed in the oral

argument and in the exhaustive briefs which have been filed, but upon consideration they do not impress me as being of sufficient merit to warrant a reversal or modification of the referee's order. Accordingly it will be affirmed.

FRANK S. DIETRICH,  
Judge."

(j) That thereafter and on to-wit: the 6th day of August, 1917, Judge Dietrich caused to be entered an order affirming the referee's order of May 28th, 1917, as follows, to-wit:

After due consideration of the arguments and briefs on the review of the order of the Referee in Bankruptcy in the above entitled Court and cause made and entered on the 28th day of May, 1917, at Coeur d'Alene, Idaho, allowing the claim of the Mechanics Loan & Trust Company, it is hereby ORDERED that the said order of the Referee be and the same is hereby affirmed.

### III.

That the ruling of the said Honorable Frank S. Dietrich was erroneous in law and in fact in the following particulars:

(a) The referee had no jurisdiction to pass upon the claim of a preference or lien by the Mechanics Loan & Trust Company or by the Exchange National Bank or by either of them to the dividends due or which should be found to be due and declared to these petitioners or either of them or to determine any rights whatsoever to the dividends to be declared herein as between the said claimants and these petitioners.



(b) The said Referee committed error in admitting any evidence of E. T. Coman as to the conversations had between himself and John Fletcher, S. H. Hess, E. L. Carpenter, Bob Wetmore, I. F. Searle, C. D. Gibbs and H. J. Aaron, or any of them, and admitting evidence of any conversations had by and between the said E. T. Coman or either of said persons, or in the presence of any of said persons relative to what was said about what should constitute ninety per cent of the creditors of said bankrupt; relative to what was said about when said contract should take effect; relative to what was said as to what should be done under said contract; relative to what was said about Siegmund Katz coming to Spokane or Gibbs, Idaho; relative to what was said about what he should do; relative to what was said about the financial condition of the Mechanics Loan & Trust Company; and relative to what was said about the Exchange National Bank advancing any money or funds.

(c) The said Referee committed error in basing his decision upon said incompetent testimony.

(d) The said Referee committed error in refusing to sustain the objections made by your petitioners to the claim of the Mechanics Loan & Trust Company.

(e) Said Referee committed error in refusing to sustain the objections made by your petitioners to the filing and allowance of the claim of the Exchange National Bank of Spokane.

(f) Said Referee committed error in overruling

the several objections to the amended proof of claim of the Mechanics Loan & Trust Company.

(g) Said Referee committed error in allowing the claim of the Mechanics Loan & Trust Company in the sum of \$101,162.91.

(h) The said Referee committed error in allowing the claim of the Mechanics Loan & Trust Company for any sum.

(i) The said Referee committed error in finding that the evidence discloses that the sum of \$639,940.56 was considered by the signers of said trust agreement to be at least 90 per cent of the indebtedness of the bankrupt at the time of signing said trust agreement and that when Genevieve H. Tolerton signed said agreement then that 90 per cent of said indebtedness of said bankrupt would have signed.

(j) Said Referee committed error in finding that Siegmund Katz was not only to become a stockholder and an officer of the Stack-Gibbs Lumber Company, but was also to represent the Mechanics Loan & Trust Company.

(k) The said Referee committed error in finding that the Mechanics Loan & Trust Company took possession of the property of the Stack-Gibbs Lumber Company by and through its representative the said Siegmund Katz.

(l) Said Referee committed error in finding that in so far as the signers of said trust agreement are concerned Section 3170 of the Idaho Revised Codes as to change of possession was fully complied with by said Mechanics Loan & Trust Company.

(m) The said Referee committed error in ordering and adjudging that the Mechanics Loan & Trust Company be paid all dividends or moneys that might thereafter be determined by the court to be due and payable to the following persons or corporations signing said trust agreement, to-wit: Merrill Cox & Company; Fort Dearborn National Bank; I. F. Searle, First National Bank of Lincoln, Nebraska, Exchange National Bank of Spokane, Washington, Shoshone Lumber Company, Idaho Timber Company, S. H. Hess, J. K. Stack, Genevieve H. Tolerton, and Minnie A. Gibbs, until the full amount of \$101,162.91 was paid, and in ordering and adjudging that said sum be declared to be a first lien upon the dividends of said respective parties.

(n) Said Referee committed error in granting the petition of the Exchange National Bank of Spokane, Washington, with the modification that all sums thereafter found to be due and payable to the Mechanics Loan & Trust Company should be paid jointly with said Exchange National Bank of Spokane, Washington.

(o) Said Referee committed error in finding that the evidence discloses that it was understood by the signers of the trust agreement under consideration that the Mechanics Loan & Trust Company possessed but small capital but that the said Exchange National Bank would advance whatever money was necessary to the proper execution of the trust not to exceed the sum of \$100,000.00, and in finding that said bank did this to the extent of said sum.

(p) Said Referee committed error in allowing said claim of the Mechanics Loan & Trust Company in that the claimant, Mechanics Loan & Trust Company, is not now and never was the owner of the notes therein mentioned and the evidence shows that it has no claim whatsoever against the said bankrupt.

(q) Said Referee committed error in allowing the claim of the said Mechanics Loan & Trust Company in that the said claimant, Mechanics Loan & Trust Company, did not advance or furnish to the above named bankrupt any sum of money whatsoever.

(r) Said Referee committed error in allowing and ruling that the alleged contract attached to the claim of said Mechanics Loan & Trust Company was signed by 90 per cent in amount of the indebtedness of said bankrupt, in that the said alleged contract never became operative by reason of the failure to secure the signatures of 90 per cent in amount of said creditors.

(s) Said Referee committed error in holding and deciding that said trust agreement was and is valid.

(t) The Judge of the above entitled Court committed error in not adjudging the order of the Referee to be erroneous and void.

(u) The Judge of this Court committed error in refusing to adjudge that the said Referee in Bankruptcy was without jurisdiction to pass upon the claim of a preference or lien by the said the Mechanics Loan & Trust Company or the Exchange

National Bank or either of them to the dividends due or which should thereafter be found to be due and declared to these petitioners or either of them or to determine any rights whatsoever to the dividends to be declared herein as between the said claimants and these petitioners and other creditors.

(v) The Judge of this Court committed error in refusing to sustain each and all of the various objections and exceptions to the rulings and orders of the said Referee in Bankruptcy made by these petitioners and other creditors in the premises.

(w) The Judge of this Court committed error in affirming the order of the Referee.

#### IV.

That the amount involved in the above controversy exceeds the sum of \$2,000.00, but that said amount exclusive of interests amounts to approximately \$100,000.00.

WHEREFORE, your petitioners, feeling aggrieved because of such orders and each of them, ask that the same may be reviewed in matters of law by your Honorable Court, as provided in Section 24-B of the Bankruptcy law of 1898 and the rules and practice in such cases provided.

W. A. ARMSTRONG,

*Trustee in Bankruptcy.*

By Robert Weinstein, His Attorney.

MERRILL COX & COMPANY,

By Elmer H. Adams, Harry L. Cohn,  
Adams, Crews, Bobb & Westcott, Its  
Attorneys.



I. F. SEARLE,

By Reese H. Voorhees & H. W. Canfield,  
His Attorneys.

MINNIE A. GIBBS,

By Reese H. Voorhees & H. W. Canfield,  
Her Attorneys.

Harry L. Cohn,  
Robert Weinstein,  
Voorhees & Canfield,  
Adams, Crews, Bobb & Wescott,  
Attorneys for Petitioners.

United States of America,  
State of Washington,  
Spokane County,—ss.

I, Harry L. Cohn, being first duly sworn, upon oath depose and say: That I am the attorney for the Petitioner, Merrill Cox & Company; that Merrill Cox & Company has no officer or agent within the County of Spokane, State of Washington, or nearer to Boise, Idaho, or Coeur d'Alene, Idaho, than Chicago, Illinois; that affiant is the agent and attorney of the said Merrill Cox & Company for the purpose of all litigation in the above entitled matter and the prosecution of this Petition for Review and that the Statement of Facts contained in the foregoing Petition for Review are true according to the best of my knowledge, information and belief.

HARRY L. COHN.

Subscribed and sworn to before me this 7th day of August, 1917.

(N. P. Seal) MAURICE OPPENHEIMER,  
Notary Public, in and for the State of Wash-  
ington, residing at Spokane.

Service of petition acknowledged by attorneys for Exchange Nat. Bank and Mechanics Loan & Trust Company.

Endorsed: Filed Aug. 9, 1917.

W. D. McReynolds, Clerk.

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(Title of Court and Cause.)

No. 905

EXCEPTIONS.

Come now the Petitioners, W. A. Armstrong, the Trustee in Bankruptcy herein, and Merrill Cox & Company, I. F. Searle and Minnie A. Gibbs, and, at the time of the signing of the order by the above entitled Court passing upon the petition of these, the Trustee, and these and various other creditors, reviewing the Findings and Report of the Referee, which were made on the 28th day of May, 1917, and excepts to the Court's ruling as follows:

1. The petitioners except to the refusal of the court to sustain its exceptions and objections that the Referee has had no jurisdiction to pass upon the claim of a preference or lien by the Mechanics Loan & Trust Company and by the Exchange National Bank of Spokane, Washington, or either of them, to the dividends due or which should be found to be due and declared to petitioning creditors, and other creditors of said estate, or to determine any rights whatsoever to the dividends to be declared herein as between the said claimants and these said petitioners.

2. The petitioners except to the refusal of the Court to sustain its exceptions and objections that

the Referee committed error in admitting any evidence of E. T. Coman as to conversations had between himself and John Fletcher, S. H. Hess, E. D. Carpenter, Bob Wetmore, I. F. Searle, C. D. Gibbs and H. J. Aaron, or any of them, and of admitting evidence of any conversations had by and between the said E. T. Coman and or either of said persons, or in the presence of said persons to what was said about what should constitute 90 per cent of the creditors of said bankrupt; relative to what was said about when said contract should take effect; relative to what was said about what should be done under said contract; relative to what was said about Siegmund Katz coming to Spokane or Gibbs, Idaho; relative to what was said about what he should do; relative to what was said about the financial condition of the Mechanics Loan & Trust Company and relative to what was said about the Exchange National Bank advancing any money or funds.

3. The petitioners except to the refusal of the Court to sustain its exceptions and objections that the Referee committed error in basing his decision upon incompetent testimony.

4. The petitioners except to the refusal of the Court to sustain its exceptions and objections that the Referee committed error in refusing to sustain the objections made by these petitioners to the claim of the Mechanics Loan & Trust Company.

5. The petitioners except to the refusal of the Court to sustain its exceptions and objections that the Referee committed error in refusing to sustain the objections of your petitioners to the filing and

allowance of the claim and petition of the Exchange National Bank.

6. The petitioners except to the refusal of the Court to sustain its exceptions and objections that the Referee committed error in overruling the several objections to the amended proof of claim of the Mechanics Loan & Trust Company.

7. The petitioners except to the refusal of the Court to sustain its exceptions and objections that the Referee committed error in allowing the claim of the Mechanics Loan & Trust Company in the sum of \$101,162.91.

8. The petitioners except to the refusal of the Court to sustain its exceptions and objections that the Referee committed error in allowing the claim of the Mechanics Loan & Trust Company for any sum.

9. The petitioners except to the refusal of the Court to sustain its exceptions and objections that the Referee committed error in finding that the evidence discloses that the sum of \$639,940.56 was considered by the signers of said trust agreement to be at least 90 per cent of the indebtedness of said bankrupt at the time of signing said trust agreement and that when Genevieve H. Tolerton signed, then 90 per cent of said indebtedness of said bankrupt would have signed.

10. The petitioners except to the refusal of the Court to sustain its exceptions and objections that the Referee committed error in finding that Siegmund Katz was not only to become a stockholder and an officer of the Stack-Gibbs Lumber Company, but

was also to represent the Mechanics Loan & Trust Company.

11. The petitioners except to the refusal of the Court to sustain its exceptions and objections that the Referee committed error in finding that the said Mechanics Loan & Trust Company took possession of the property of the Stack-Gibbs Lumber Company by and through its representative, the said Siegmund Katz.

12. The petitioners except to the refusal of the Court to sustain its exceptions and objections that the Referee committed error in finding that in so far as the signers of the Trust agreement are concerned, Section 3170 of the Idaho Revised Codes as to change of possession was fully complied with by said Mechanics Loan & Trust Company.

13. The petitioners except to the refusal of the Court to sustain its exceptions and objections that the Referee committed error in finding, ordering and adjudging that the said Mechanics Loan & Trust Company be paid all dividends or moneys that may hereafter be determined by the court to be due and payable to the following persons or corporations signing said trust agreement, to-wit: Merrill Cox & Company, Fort Dearborn National Bank, I. F. Searle, First National Bank of Lincoln, Nebraska, Exchange National Bank of Spokane, Washington, Shoshone Lumber Company, Idaho Timber Company, S. H. Hess, J. K. Stack, Genevieve H. Tolerton and Minnie A. Gibbs until the full amount of \$101,162.91 was paid and in ordering and adjudg-



ing that said sum be declared to be a first lien upon the dividends of the respective parties.

14. The petitioners except to the refusal of the Court to sustain its exceptions and objections that the Referee committed error in granting the petition of the Exchange National Bank of Spokane, Washington, with the modification that all sums thereafter found to be due and payable to Mechanics Loan & Trust Company should be paid jointly with the said Exchange National Bank of Spokane, Washington.

15. The petitioners except to the refusal of the Court to sustain its exceptions and objections that the Referee committed error in finding that the evidence discloses that it was understood by the signers of the trust agreement that the Mechanics Loan & Trust Company possessed but small capital but that the Exchange National Bank of Spokane would advance whatever money was necessary to the proper execution of the trust, not to exceed the sum of \$100,000.00, and in finding that the said bank did this to the extent of said sum.

16. The petitioners except to the refusal of the Court to sustain its exceptions and objections that the Referee committed error in allowing the said claim of the Mechanics Loan & Trust Company in that the said Mechanics Loan & Trust Company is and was not the owner of the notes mentioned in its said claims, and the evidence shows that it has and had no claim whatsoever against the bankrupt.

17. The petitioners except to the refusal of the Court to sustain its exceptions and objections that

the Referee committed error in allowing the claim of the said Mechanics Loan & Trust Company for the reason that the said Mechanics Loan & Trust Company did not loan, advance or furnish to the above named bankrupt any sum of money whatsoever.

18. The petitioners except to the refusal of the Court to sustain its exceptions and objections that the Referee committed error in allowing and ruling that the alleged contract attached to the claims of the Mechanics Loan & Trust Company was signed by 90 per cent in amount of the indebtedness of the said bankrupt, in that the said alleged contract never became operative by reason of the failure to secure the signatures of 90 per cent in amount of said creditors.

19. The petitioners except to the refusal of the Court to sustain its exceptions and objections that the Referee committed error in holding and deciding that said trust agreement was and is valid.

20. The petitioners except to the refusal of the Court to sustain each and every exception and objection made and contained in the petition of these petitioners and other creditors, for the Review of the Report of the Referee, made on the 28th day of May, 1917, which said petition was filed June 7th, 1917.

21. The petitioners except to the whole and every part of the order of the Court entered herein, and particularly to that part of said order wherein and whereby the said Court confirms the report and order of the said Referee which it reviewed.

22. The petitioners except to the refusal of the Court to make and cause to have entered herein its proposed Findings of Fact herein, and particularly, the first paragraph thereof.

23. The petitioners except to the refusal of the Court to make and cause to have entered herein its proposed findings of fact herein, and particularly, the second paragraph thereof.

24. The petitioners except to the refusal of the Court to make and cause to have entered herein its proposed findings of fact and particularly, the third paragraph thereof.

25. The petitioners except to the refusal of the Court to make and cause to have entered herein its proposed findings of fact and particularly, the fourth paragraph thereof.

26. The petitioners except to the refusal of the Court to make and cause to have entered herein its proposed findings of fact and particularly, the fifth paragraph thereof.

27. The petitioners except to the refusal of the Court to make and cause to have entered herein its proposed findings of fact and particularly, the sixth paragraph thereof.

28. The petitioners except to the refusal of the Court to make and cause to have entered herein its proposed findings of fact and particularly, the seventh paragraph thereof.

29. The petitioners except to the refusal of the Court to make and cause to have entered herein its proposed findings of fact and particularly, the eighth paragraph thereof.

30. The petitioners except to the refusal of the Court to make and cause to have entered herein its proposed findings of fact and particularly, the ninth paragraph thereof.

31. The petitioners except to the refusal of the Court to make and cause to have entered herein its proposed findings of fact and particularly the tenth paragraph thereof.

32. The petitioners except to the refusal of the Court to make and cause to have entered herein its proposed findings of fact and particularly, the eleventh paragraph thereof.

33. The petitioners except to the refusal of the Court to make and cause to have entered herein its proposed conclusions of law and particularly, the first paragraph thereof.

34. The petitioners except to the refusal of the Court to make and cause to have entered herein its proposed conclusions of law and particularly, the second paragraph thereof.

35. The petitioners except to the refusal of the Court to make and cause to have entered herein its proposed conclusions of law and particularly, the third paragraph thereof.

36. The petitioners except to the refusal of the Court to make and cause to have entered herein its proposed findings of fact and each and every part thereof.

37. The petitioners except to the refusal of the Court to make and cause to have entered herein its proposed conclusions of law and each and every part thereof.

38. The petitioners except to the refusal of the Court to sign its proposed order or decree, which together with said proposed findings of fact and conclusions of law, was duly presented to the Court for signature at the time the order confirming the report of the referee herein was signed, and both said decree, and proposed findings of fact and conclusions of law were refused by the Judge of said Court.

39. The petitioners except to that part of the order of the Court wherein the dividends or moneys payable unto these petitioners, save and except the Trustee in bankruptcy, as well as other creditors, is ordered paid unto the Mechanics Loan & Trust Company until the sum of \$101,162.91 is paid.

ROBERT WEINSTEIN,

Attorney for W. A. Armstrong, Trustee in Bankruptcy.

ELMER H. ADAMS,

HARRY L. COHN,

ADAMS, CREWS, BOBB & WESTCOTT,

Attorneys for Merrill Cox & Company.

REESE H. VOORHEES and

H. W. CANFIELD,

Attorneys for I. F. Searle and Minnie A. Gibbs.

The foregoing exceptions were, at the time of the signing of the order herein, considered by the Court, and said exceptions were allowed.

August 9th, 1917.

FRANK S. DIETRICH, Judge.

Filed August 9, 1917. W. D. McReynolds, Clerk.



(Title of Court and Cause.)

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER.

(Refused by the Court.)

The above entitled cause came on to be heard before the above entitled Court upon a review of an order made by the Referee in Bankruptcy herein allowing the claim of the Mechanics Loan & Trust Company, which said order was entered by the Referee upon the 28th day of May, 1917, and the Court having heretofore heard the arguments of counsel for the respective parties hereto, the above named claimant, the Mechanics Loan & Trust Company and the above named petitioner, Exchange National Bank of Spokane, Washington, appearing by Post, Russell, Carey & Higgins, Esqs., its attorneys, and the Trustee in Bankruptcy herein appearing by Robert Weinstein, Esq., his attorney, and various creditors herein appearing by Danson, Williams & Danson, Harry L. Cohn, Voorhees & Canfield, Adams, Crews, Bobb & Westcott, Esqs., attorneys for said several creditors, and the Court having heard the arguments of counsel and having considered the testimony heretofore taken herein before the Referee upon the hearing of said claim and petition and having duly considered the same and being fully advised in the premises makes and finds the following

FINDINGS OF FACT.

I.

That heretofore a petition in involuntary bankruptcy was filed and after proceedings had thereon

in the manner provided by law, the Stack-Gibbs Lumber Company, a corporation, was duly adjudged a bankrupt and an order of adjudication in bankruptcy was entered against the said corporation.

## II.

That thereafter one W. A. Armstrong was duly appointed, the Trustee of said bankrupt and at all of the times herein mentioned has been and now is the duly appointed, qualified and acting Trustee in Bankruptcy herein.

## III.

That heretofore the Mechanics Loan & Trust Company filed its claim against the above named bankrupt and thereafter and on the sixth day of January, 1917, the said Mechanics Loan & Trust Company filed an amended claim against the bankrupt and prayed that the amount of said claim become a preference in that all dividends paid or ordered to be paid to certain creditors should be first applied upon said preference claims until the said Mechanics Loan & Trust Company should have received the full sum of \$101,162.91.

## IV.

That thereafter Merrill Cox & Company, S. H. Hess, I. F. Searle, Minnie A. Gibbs, The Idaho Timber Company, The Shoshone Lumber Company, all creditors of said bankrupt, whose claims had been approved and allowed as well as the Trustee in Bankruptcy filed objections to the allowance of said claim of the said Mechanics Loan & Trust Company.

V.

That the matter of the allowance of said claim of Mechanics Loan & Trust Company came on for hearing before the Referee in Bankruptcy herein and proceedings were had by the taking of testimony therein. That during the hearing thereof and on, to-wit, the nineteenth day of February, 1917, the Exchange National Bank of Spokane, Washington, filed its petition in said matter praying that the claim of the Mechanics Loan & Trust Company be allowed in its entirety and stating therein that notwithstanding that it the said Exchange National Bank was the owner of the notes upon which the said claim was based that it the said bank had sanctioned and approved the said trust company filing its claim herein.

VI.

That after said petition had been filed the creditors hereinbefore named moved to strike the said petition which said motion was overruled and thereafter the said creditors filed an answer to said petition and the hearing of the claim of the Mechanics Loan & Trust Company and the petition of the said Exchange National Bank were consolidated by an order of the said Referee and the said cause proceeded by the taking of testimony therein.

VII.

The Court finds that the said Mechanics Loan & Trust Company did not at any time advance any money whatsoever to the said bankrupt herein and has no claim against said bankrupt which is prov-

able in bankruptcy or otherwise. And in this connection the court finds that the contract set out and attached to the said amended proof of claims of the said Mechanics Loan & Trust Company and which is referred to in the petition of the Exchange National Bank was not signed by 90 per cent of the creditors of the bankrupt as contemplated therein and the said trust agreement never took effect and is of no force or validity and that the said Mechanics Loan & Trust Company never in any manner or at any time took possession of the assets of the bankrupt as in said trust agreement contemplated.

#### VIII.

The Court finds that while moneys were advanced to the bankrupt, they were in truth and in fact loaned to the said bankrupt by the Exchange National Bank of Spokane, but that the said Exchange National Bank of Spokane was not a party to said trust agreement, had no right thereunder, and that the said bank has filed no claim herein.

#### IX.

That the said Mechanics Loan & Trust Company and the said Exchange National Bank of Spokane concealed from the other creditors of said bankrupt the fact that the said bankrupt was insolvent and in a desperate financial condition and in failing circumstances and therein acted in bad faith toward the other creditors of the said bankrupt.

#### X.

That the said Mechanics Loan & Trust Company is not the owner of the notes set out in claim filed herein.

XI.

That said Referee had no jurisdiction to pass upon the claim of a preference or lien by the Mechanics Loan & Trust Company and by the Exchange National Bank or by either of them to the dividends due or which should be found to be due and declared to these petitioners or either of them or to determine any rights whatsoever to the dividends to be declared herein as between the claimants and the objecting creditors.

And from the foregoing Findings of Fact the Court makes its Conclusions of Law as follows, to-wit:

I.

That the claim of the Mechanics Loan & Trust Company against the bankrupt herein should be disallowed and rejected.

II.

That the petition of the Exchange National Bank herein should be dismissed.

III.

That the Referee as well as this Court was and is without jurisdiction to hear and determine any contention herein relative to the rights of the claimant and the petitioner or either of them to have the dividend due to the objecting creditors paid to them or either of them.

Done in open court the ..... day of August, 1917.

-----  
Judge.



## PROPOSED ORDER.

The above entitled cause came on to be heard before the above entitled Court upon a review of an order made by the Referee in Bankruptcy herein allowing the claim of the Mechanics Loan & Trust Company, which said order was entered by the Referee upon the 28th day of May, 1917, and the Court having heretofore heard the arguments of counsel for the respective parties hereto, the above named claimant, the Mechanics Loan & Trust Company and the above named petitioner, Exchange National Bank, of Spokane, Washington, appearing by Post, Russell, Carey & Higgins, Esqs., its attorneys, and the Trustee in Bankruptcy herein appearing by Robert Weinstein, Esq., his attorney, and various creditors herein appearing by Danson, Williams & Danson, Harry L. Cohn, Voorhees & Canfield, Adams, Crews, Bobb & Westcott, Esqs., attorneys for said several creditors, and the Court having heard the arguments of counsel and having considered the testimony heretofore taken herein before the Referee upon the hearing of said claim and petition and having duly considered the same and being fully advised in the premises and having made and entered herein its Findings of Fact and Conclusions of Law.

Now therefore, it is ordered, adjudged and decreed that the claim of the Mechanics Loan & Trust Company and the amended claim of the Mechanics Loan & Trust Company against the bankrupt and as against the objecting creditors be in its entirety and the same is hereby disallowed and rejected in each and every particular.

It is further ordered, adjudged and decreed that the petition of the Exchange National Bank of Spokane, Washington, herein be and the same is hereby dismissed.

Done in open court this ..... day of August, 1917.

BY THE COURT.

.....  
Judge.

Refused for the reason that no findings were requested or suggested until after the order complained of was entered.

August 9th, 1917.

DIETRICH, Judge.

(Endorsed): Filed Aug. 9, 1917. W. D. Reynolds, Clerk.

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*In the District Court of the United States for the  
District of Idaho, Northern Division.*

IN THE MATTER OF STACK-GIBBS LUMBER  
COMPANY (a corporation)

Bankrupt.

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IN THE CONSOLIDATED MATTER OF THE  
CLAIM OF MECHANICS LOAN & TRUST  
COMPANY, AND THE PETITION OF EX-  
CHANGE NATIONAL BANK OF SPOKANE,  
WASHINGTON.

United States of America,—ss.

To Mechanics Loan & Trust Company and the Exchange National Bank of Spokane and to Frank T. Post and Post, Russell, Carey & Higgins, your attorneys.

You are notified that I. F. Searle, Minnie A. Gibbs and Merrill Cox & Company, the Appellants, herewith presents and serves upon you their Bill of Exceptions as follows, to-wit:

H. W. CANFIELD,  
REESE H. VOORHEES,  
ELMER H. ADAMS,  
HARRY L. COHN,  
Attorneys for Appellants.

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(Title of Court and Cause.)

#### APPEARANCES.

H. W. Canfield and Rees H. Voorhees, Spokane & Eastern Trust Building, Spokane, attorneys for I. F. Searle and Minnie A. Gibbs.

Danson, Williams & Danson, Paulson Building, Spokane, Washington, attorneys for S. H. Hess, Idaho Timber Co. and Shoshone Lumber Co.

Elmer H. Adams, 76 West Monroe street, Chicago, and Harry L. Cohn, 501 Mohawk Building, Spokane, Washington, attorneys for Fort Dearborn National Bank and Merrill Cox & Company.

Frank T. Post, Exchange National Bank Building, Spokane, Washington, attorney for Mechanics Loan & Trust Company, and Exchange National Bank of Spokane.

#### BILL OF EXCEPTIONS.

Be it remembered that this cause came on regularly for hearing before L. L. Lewis, Esquire, Referee in Bankruptcy, on the third day of January, A. D. 1917, at the hour of ten o'clock in the forenoon of said day, pursuant to the order theretofore made

and entered herein, the Mechanics Loan & Trust Company appearing by its officers and by Frank T. Post and Post, Russell, Carey & Higgins, its attorneys, and the appellants, I. F. Searle and Minnie A. Gibbs appearing by their attorneys, H. W. Canfield and Reese H. Voorhees; and Fort Dearborn National Bank and Merrill Cox & Company appearing by Elmer H. Adams, Esquire, and S. H. Hess, Idaho Timber Co. and Shoshone Lumber Co. appearing by R. F. Danson, their attorney. And thereafter the following proceedings were had:

Thereupon Siegmund Katz being called as a witness on behalf of the Mechanics Loan & Trust Company, and being first duly sworn, testified as follows:

#### TESTIMONY OF SIEGMUND KATZ.

##### Direct Examination.

Examined by Mr. Post:

My name is Siegmund Katz. I came to Spokane on February 16, 1916, from Chicago, having previously been in the lumber business for about six years, manufacturing and selling lumber. I was introduced to Mr. Gibbs in Chicago and talked over with him the terms under which I was supposed to come here. I was introduced to Mr. Gibbs by Mr. Tilden of Merrill, Cox & Company, he being one of its officers. I had known Mr. H. J. Aaron for a few months prior to that, who introduced me to Mr. Tilden. I do not know who Mr. Aaron represents. Mr. Aaron was the first one who suggested that I come to Gibbs, Idaho. At that time I do not think he told me the purpose for which he desired me to come, or

whom he represented. On my arrival in Spokane I went to the Exchange National Bank and if I remember right I was there in the morning and was told that Mr. Coman was out. I brought a letter of introduction along but I do not know who wrote it. It was to Mr. Coman. The letter was given to me, however, by Mr. Aaron. I am the secretary of the Stack-Gibbs Lumber Company.

Mr. Post: Find the minutes of the meeting of the Board of Directors, February 15, 1916.

The Witness: Yes, sir.

Mr. Post: I offer in evidence these minutes of February 15, 1916.

The minutes were admitted without objection, and marked Petitioners' Exhibits 1 and 2. Exhibit 1 is a minute of a stockholders' meeting of the bankrupt held on February 15, 1916, showing an election of a board of directors for the corporation, and that the members elected are C. D. Gibbs, S. Katz and H. F. Cleland. Exhibit 2 is a minute of the regular meeting of the board of directors held on February 15, 1916, showing the election of C. D. Gibbs as president, H. F. Cleland as vice president, and S. Katz as secretary and treasurer of the bankrupt corporation.

The Witness: I do not know whether I signed an affidavit qualifying as a director of the Stack-Gibbs Lumber Company as I signed so many things I do know. The record that I have now before me shows that a stockholders' meeting of said corporation was held on February 18. (60).

Mr. Post: Offering in evidence the minutes of the stockholders' meeting of February 18th, 1916, which



were admitted and marked Petitioner's Exhibit No. 3. This exhibit is the minutes of a stockholders' meeting of February 18, 1916, and shows that 7000 shares out of a total stock of 8000 shares were represented, and that the trust deed which is attached to and made a part of the amended petition of the Mechanics Loan & Trust Company herein was presented at the meeting and a resolution was unanimously adopted authorizing and instructing the board of directors of the company to execute or cause to be executed said trust deed. A copy of said trust deed is set out in said minutes, and said copy has as a part thereof the following: "The undersigned creditors of the Stack-Gibbs Lumber Company and the Dryad Lumber Company, to the amounts set opposite their names, hereby become parties to and agree to all the terms and conditions of the foregoing deed of trust dated February 1, 1916.

<i>Creditors.</i>	<i>Amount of Claim.</i>
Merrill, Cox & Company.....	\$221,250.00
By H. J. Aaron, its attorney.	
Fort Dearborn National Bank.....	107,000.00
By H. J. Aaron, its attorney.	
I. F. Searle .....	55,000.00
First National Bank of Lincoln, Nebras- ka, by I. F. Searle.....	12,500.00
The Exchange National Bank of Spokane	6,900.00
By Edwin T. Coman, President.	
Shoshone Lumber Company.....	5,000.00
By E. L. Carpenter, President.	
Idaho Timber Company.....	60,000.00
By E. L. Carpenter, Treasurer.	

S. H. Hess .....	30,000.00
J. K. Stack.....	110,000.00
Genevieve Hess Tolerton.....	20,465.56

Mr. Post: I offer the minutes of the meeting on pages 202 and 203 of the Minute Book, marked Petitioner's Exhibit No. 4. Said exhibit is a minute of the meeting of the board of directors of the bankrupt corporation held on February 18, 1916, showing the directors present as C. D. Gibbs, H. F. Cleland and S. Katz. Said trust deed was presented and considered and a resolution unanimously adopted authorizing and instructing the president and secretary of the corporation to execute the same.

The Referee: No objection being made, they will be admitted.

The Witness: At these meetings you were present in Gibbs, Idaho. Subsequently, the next meeting that appears in the book is August 1st, 1916, a meeting of the Board of Directors of the Stack-Gibbs Lumber Company. (62.)

These minutes were offered in evidence, marked as Petitioner's Exhibit No. 5 and were admitted and read to the court by Mr. Post. This minute of the meeting of the board of directors of August 1, 1916, is to the effect that all of the directors were present and that S. Katz acted as secretary, and that Mr. Gibbs reported that a petition in bankruptcy had been filed against the corporation alleging that the corporation was insolvent and had committed acts of insolvency, and that there had also been filed a petition for the appointment of a receiver of the corporation until a trustee in bankruptcy could be

elected, and that on motion of Mr. Katz, seconded by Mr. Cleland, a resolution was adopted directing Mr. Gibbs, as president, to file an answer in the bankruptcy proceedings in the United States District Court admitting the insolvency of the corporation and consenting to the appointment of such receiver.

Mr. Post: I offer in evidence what appears on page 59 of the Secretary's book of the Dryad Lumber Company, a meeting of the Board of Trustees of that company at which, according to the minutes, Mr. Cleland resigned as Secretary-Treasurer and Mr. Canfield resigned as Trustee and Vice-President and Mr. Katz was elected Treasurer and also trustee.

Mr. Adams: What is the date?

Mr. Post: February 16, 1916. Said minutes were admitted in evidence and marked Petitioner's Exhibit No. 6. Said minutes show that the meeting of the board of trustees of the Dryad Lumber Company was held on February 15, 1916; that Mr. Canfield resigned as trustee and vice-president, and that Mr. Cleland resigned as secretary and treasurer, and that S. Katz was elected a member of the board of trustees and also as secretary and treasurer and that Mr. Cleland was elected as vice-president.

Q. The stockholders' meeting of the Dryad Lumber Company held on the 18th day of February, 1916, at which you were present and there is a minute here, commencing with page 60?

A. Correct.

Mr. Post: I offer the minutes of this meeting in evidence, a similar resolution was passed there as at the Stack-Gibbs Lumber Company, February 18th, authorizing this trust deed.

Whereupon the minutes referred to were admitted in evidence and marked Petitioner's Exhibit No. 7 admitted. (63.) Said minutes show that the stockholders' meeting of Dryad Lumber Company was held on February 18, 1916, at which  $2187\frac{7}{8}$  shares were represented, being all the stock except  $312\frac{1}{8}$  shares, and that the trust deed attached to the amended petition of Mechanics Loan & Trust Company was considered, and that a resolution was unanimously adopted authorizing and instructing the board of directors to execute or cause to be executed said trust deed.

On the same date the board of trustees of the Dryad Lumber Company held a meeting, at which I was present, and the minutes are at pages 75 and 76. Mr. Post offered the minutes in evidence and the same were received and marked Exhibit 8. Said minutes show a meeting of the board of trustees on the day named, at which all the trustees were present, and that a motion was made by Mr. Cleland and seconded by Mr. Katz that the president and secretary of the corporation be authorized and instructed to execute the trust deed in question, and that the same was unanimously adopted.

On August 1, 1916, the board of directors of the Dryad Lumber Company held a meeting, and said minutes are on pages 77 and 78. Said minutes were offered and received in evidence and marked Exhibit

9. Said minutes show a meeting of the board of directors of said company; that Mr. Katz acted also as secretary, and that Mr. Nelson reported to the meeting that a petition in bankruptcy had been filed against the Dryad Lumber Company, and also a petition for the appointment of a receiver until a trustee in bankruptcy could be elected. Mr. Katz introduced a resolution that the president of the company be authorized to file an answer in the bankruptcy proceedings admitting the insolvency of the company and consenting to the appointment of a receiver, and that said motion was adopted.

Q. Please look at that (referring to Exhibit No. 10) and tell us whether February 22, 1916, you sent a letter to each of the creditors named in the trust deed set forth in the minutes now in evidence and whether that is one of such letters?

Mr. Adams: I object, as the notice is the best evidence.

Mr. Post: Did you bring here your correspondence, Mr. Adams?

Mr. Adams: No, I didn't have any notice to bring it.

Mr. Post: You didn't bring anything then?

Mr. Adams: Only my office files.

Mr. Post: You have here a letter of February 22, 1916?

Mr. Adams: No, sir; never knew of any such letter.

Mr. Post: Got any letters written by Mr. Katz?

Mr. Adams: No, sir.

Mr. Canfield: May it be understood that any ob-



jection made by Mr. Adams applies to each of the objecting creditors.

Mr. Post: That is all right.

The Referee: The objection overruled.

Mr. Adams: Exception.

The Witness: I asked all the creditors who signed the trustee's agreement.

Mr. Post: To whom did you send this letter?

A. I believe it is mentioned in the letter. I sent a duplicate of this letter to the Mechanics Loan & Trust Company, the Fort Dearborn National Bank, Merrill, Cox and the Exchange National Bank.

Mr. Post: I offer this letter in evidence.

Mr. Adams: I object, as no sufficient foundation is laid and that it is incompetent, irrelevant and immaterial and inadmissible as to any creditor.

The Referee: The objection is overruled.

Mr. Adams: Save an exception.

Said letter dated February 22, 1916, addressed to The Exchange National Bank of Spokane, states: "I hereby hand you our daily bank statement for January 21st. It is our intention to send you a daily statement like this one every day. Before getting the form printed, we would appreciate your suggestions, or if you want any additional information on this statement, kindly let us know in time. Aside from this daily bank statement we will send a trial balance every month, which we will send about the 15th of the following month."

This letter also states: "Of the \$100,000 additional credit which we are to receive from the Mechanics Loan & Trust Company in accordance with

the new trust agreement, we have so far received \$60,000. We received the first loan on February 10th. Since that time we have had receipts of shipments amounting to \$8500, making a total of \$68,500 at our disposal for disbursements. We have disbursed this amount as follows:

Refund advanced Bardwell-Robinson.....	\$ 3,700
Refund advanced Lampert Lumber Company	9,500
Log contracts .....	15,500
Payroll .....	18,200
Bank overdrafts .....	12,000
Freight on logs.....	7,600
Accounts payable .....	1,000
Interest .....	1,000
	<hr/>
	\$68,500

About our future requirements against the remaining \$40,000 credit, we will report as we need it. Copies of this letter, as well as daily bank statements, have gone to Mechanics Loan & Trust Company, Fort Dearborn National Bank, Merrill, Cox & Company and Exchange National Bank of Spokane.”

The Witness: I signed this letter. I have a book here showing how that \$68,500.00 was paid out and given to me by Mr. Cleland as follows:

Starting with the first item, Bardwell-Robinson of date February 22, 1916, I have not that account here, that's in a different ledger. Yes—yes—\$3681.40, check No. 2777, February 12, check drawn on the Exchange National Bank of Spokane. Of course it happened before I came here, but I know it anyhow; Bardwell-Robinson was a customer of ours and Mr.

Gibbs got an advance from him in actual cash, there was supposed to be lumber shipped against it, but Mr. Gibbs afterward preferred to pay the money back because the prices under the contract were so low that he didn't care to ship the goods. Lambert Lumber Company, February 12, \$9559.68 for the same reason.

Q. Now, the next item you have in your letter is logging contracts, \$15,500.00.

A. There may be several items, but I see one of them right here, \$640 from the American Trust Company in favor of J. A. Thornton, a logging contractor. (Here the witness detailed various amounts that were paid out) (page 68) and stated that these were contractors working for the bankrupt getting out logs, and this was money owing them on account of logging contracts.

Q. The next item is payroll, \$18,200.00 (69).

A. This is mentioned here under the name of the Dryad Lumber Company; the Stack-Gibbs Lumber Company didn't have any payroll but the Dryad Lumber Company did and when payday came around the Stack-Gibbs Lumber Company put sufficient money over into the Dryad Lumber Company to take care of it, that is why you will find in here mentioned simply under the Dryad Lumber Company. I believe that the sum of \$18,200.00 is correct, but these are Mr. Cleland's figures. We kept different books and there was a different President and everything, but the officers were the same and they attended to the affairs of both companies. The Dryad Lumber Company had the payroll entirely and the Stack-

Gibbs Lumber Company had no payroll except the office force. The payroll was kept for the purpose of paying off the men of the Dryad who ran the mill and the planing mill. (70.)

The lumber that was manufactured by the Dryad Lumber Company was turned over then to the Stack-Gibbs Lumber Company, that is they sawed it for the Stack-Gibbs Lumber Company. The Stack-Gibbs Lumber Company paid the Dryad for doing this work; there was a contract between the two to pay them so much per thousand for whatever work was to be done.

Q. And they did it in part by paying the payroll for the men?

A. No, they never paid the payroll for the men. They put sufficient money into the Dryad so the Dryad could pay the men. (71.) The Dryad was an employe of the Stack-Gibbs.

An adjournment was taken until January 6th at 1:30 P. M. (73.)

The Witness: I have not the book here to figure out the overdraft and what figures I do know were given to me at the time. I see all kinds of overdraft but it does not always show the date, for instance, on the 10th—

Q. The letter is dated February 22nd?

A. Since the \$40,000.00 was received, all right.

A. I am going to start with the 11th because it says—

then the \$40,000.00 was received. We received the \$40,000.00 on the 10th and then we started to dis-

tribute that money, February 10th, 1916. We started with the receipt of \$40,000.00. (73)

Mr. Canfield: The letter states that between the 10th and 22nd of February you reduced the bank overdraft by the amount of \$12,000.00, is that the fact?

A. All I can really tell you is to give you the data, the overdrafts in the different banks as we made them up, starting in there are the amounts of the Fort Dearborn National Bank, on the 11th it was not overdrawn; Coeur d'Alene, Exchange National Bank, on the 11th, overdrawn about \$6,000.00 in round sums; remained so on the 11th the same thing; the Fort Dearborn National Bank was overdrawn on the 14th about \$22,000.00. I will explain those are not really overdrafts because Merrill Cox & Company discounted our notes at the Fort Dearborn National Bank and renewals done through the Fort Dearborn; in other words on account of the money going back and forth until we got credit for the renewal notes, the account was overdrawn; Coeur d'Alene Exchange National Bank was still overdrawn in the same way; on the 15th the Fort Dearborn was the same but the Exchange National Bank was overdrawn \$8,000.00. I mean the Exchange National Bank of Spokane. (74) On the 16th, the Fort Dearborn showed the same, the Exchange of Spokane, \$10,000.00 overdrawn and the Coeur d'Alene had been reduced to about a \$5,000.00 overdraft, so they got \$1,000.00. On the end of the 17th, the Fort Dearborn National Bank was overdrawn \$10,000.00, the Exchange Bank of Spokane, \$13,-



000.00 and the Coeur d'Alene Bank was about only \$1,000.00 overdrawn.

Q. So the Coeur d'Alene Bank had \$4,000.00?

A. Yes, then on the 18th, the end of the 18th, the Fort Dearborn was clear, the Exchange National Bank of Spokane overdrawn \$14,000.00 and the overdraft in Coeur d'Alene was about the same, the Fort Dearborn——

Q. The Fort Dearborn had been paid off between the 16th and the 18th?

A. At that time we didn't do any active business with the Fort Dearborn at all, the only business was the renewal of Merrill Cox notes. (75)

Mr. Adams: You didn't pay them any real money then at all?

A. No real money at all.

Mr. Adams: When the notes were in transit that would show an overdraft.

A. Yes, on the 19th the Fort Dearborn \$5,000.00 overdraft, the Exchange National Bank of Spokane, \$5,000.00 overdraft and the Coeur d'Alene Bank still about \$1,000.00, and on the 21st the Fort Dearborn was still \$5,000.00 overdrawn, the Exchange National Bank of Spokane, \$6,000.00 overdrawn and the Coeur d'Alene Bank closed out so we have \$5,000.00 overdraft of the Coeur d'Alene National Bank.

Q. You say closed out?

A. We closed out the account I say on that date.

Q. Then there was Six Thousand Dollars paid to the Coeur d'Alene Bank?

A. Six Thousand Dollars to the Coeur d'Alene Bank and the Exchange Bank of Spokane, started in with Eight Thousand and it was Six Thousand overdrawn at that time—\$4,000.00 overdrawn at that time, so they got \$4,000.00, that is \$10,000.00.

Mr. Adams: You paid the Exchange Bank of Spokane Four and the Coeur d'Alene Six?

A. Yes, there was \$12,000.00 in all. (76)

The difference if the First National Bank of Lincoln; I see on the end of the 10th the First National Bank of Lincoln is overdrawn to the extent of about \$4,500.00 and by the 18th, we had that overdraft entirely wiped out. We must have used about \$14,000.00 for overdraft.

On February 12th, we paid to the agent of the Chicago, Milwaukee & St. Paul for freight \$7,595.85 and there are some bills and salary accounts here I think. Little amounts to different creditors. The \$1,000.00 item is the interest on notes that we renewed which we afterwards paid. After February 18th, 1916, all of the checks issued were in the name of the Stack-Gibbs Lumber Company and were signed by me together with another officer of the company. (77) On February 18th, I gave the Exchange National Bank of Spokane, my signature.

Now referring to the note register. Here on February 9th, we gave the Mechanics Loan & Trust Company eight notes for \$5,000.00 each, Ninety days, drawn in favor of the Mechanics Loan & Trust Company, payable at the Exchange National Bank of Spokane; and on February 16th, there were three

more notes for \$5,000.00 each, payable in the same way. (78) On February 16th, another one for the same amount and on the 24th another one for \$5,000.00.

Q. That one February 24th, I suppose that was signed by you as Secretary?

A. I signed those on February 16th—I signed them the day I arrived in Spokane.

Q. How much?

A. \$5,000.00.

There were four notes signed on the 16th and on February 26th, one for \$5,000.00.

March 4th, \$5,000.00; March 8th, \$5,000.00; March 10th, \$5,000.00; March 15th, \$2,500.00; April 8th, \$5,000.00; May 11th, \$2,500.00;—that is all the notes which we issued in favor of the Mechanics. Beginning with February 16th, all these notes were signed by me. (79) We had two notes but they were made out to the Exchange National Bank of Spokane, direct of \$2,500.00 each.

Mr. Post: When was that?

A. July 10th, No. 7521.

Mr. Adams: July?

A. One minute please, I am going to find it—they were made out at the Exchange National Bank, also on May 11th, but not the Mechanics Loan & Trust Company, No. 7494, No. 7495, \$2,500.00 each, demand; all the other notes were ninety days.

Mr. Post: Do you know how those happened to be made out to the Exchange Bank?

A. That is really a riddle to me, I do not know

how that was made; I believe we made out a demand note at the time because we thought we could take them up immediately and got it from the Exchange Bank of Spokane, that is why we made out demand notes.

Q. The renewals of that note were made out to the Mechanics Loan & Trust Company?

A. This demand note has never been renewed or taken up. (80)

The first \$20,000.00 in notes were signed by me and in Mr. Coman's office and that is the last I saw of the notes, but the other notes we sent by mail into the Mechanics Loan & Trust Company.

Mr. Post: I show you a letter dated February 24, 1916, marked Exhibit 11 for identification and ask you whether or not, that is one of the letters you referred to as writing to the Mechanics Loan & Trust Company enclosing the notes?

A. That is correct.

Mr. Post: I offer this one in evidence, dated February 26th, Exhibit 12 and is also one of them? I offer the two letters in evidence. (81)

There was no objection to the introduction. The letter Exhibit 11 addressed to Mechanics Loan & Trust Company says: "We hereby hand you our note for \$5000 for ninety days, the receipt of which you will kindly deposit for our credit in the Exchange National Bank. \* \* \* We would appreciate it if you would place this credit at our disposal immediately, inasmuch as we need it tomorrow."

The letter of February 26, 1916, Exhibit 12, addressed to the Mechanics Loan & Trust Company, states: "We hereby hand you our ninety-day note for \$5000, which you will kindly discount and place receipt to our credit in the Exchange National Bank on Monday. In accordance with the letter sent to Mr. Coman on February 23rd, we will draw on you until March 10th to the extent of \$20,000. The note which you credited to us February 24th and today's note are against this loan, leaving a balance of \$10,000 yet to be drawn."

Mr. Post: I offer in evidence a letter of February 19th to the Mechanics Loan & Trust Company marked for identification, Exhibit 13.

(And, no objection being made, it was received.)

This letter is signed by S. Katz, dated February 19, 1916, and says: "In reply to your request for daily bank report, will say that we are preparing to send out such reports to every bank interested. The first reports will go forward in a few days."

I sent out the report mentioned in those letters. I believe it was the Exchange Bank, the Mechanics Loan & Trust, the Fort Dearborn National Bank, I believe those three got it. Merrill Cox may have too but I am not positive about this. I remember I sent one copy of the payroll to the Mechanics Loan & Trust Company, only one, (82) but I did not send any such thing to Chicago. I had correspondence with Merrill, Cox & Company in February, March and April. I have copies of the correspondence. (84)

Mr. Post: I show you Exhibit 14.



The Witness: That is my signature; that is one of the original Trust Deeds.

Q. You remember you signed several of them don't you?

A. O yes, I guess I did.

Mr. Post: I wish to offer in evidence at this time this instrument.

Mr. Adams: In the first place, no foundation has been laid for its introduction and it is incompetent and immaterial; it does not appear that the people signing that agreement, that is, for instance, the Mechanics Loan & Trust Company, had any authority in the State of Idaho to enter into such a contract; the objections are all set forth in the written objections filed to this claim. (84) I am assuming that some place along the line, Mr. Post will connect up all those items and make them good. If it is admitted, subject to the objections filed against it, why then we can get along without delay and in the argument we can argue out whether Mr. Post has made out sufficient evidence to admit this contract or not.

Mr. Post: There are sometimes formal objections and sometimes substantial ones; and I do not suppose these gentlemen are going to object it wasn't properly executed or anything like that, but if they are I want to know it.

Mr. Adams: We certainly have and we have filed it in writing and I think you have a copy of it.

The Referee: I suggest you lay proper foundation for its introduction.

Mr. Post: On page 15 of this instrument appears your name signed as Secretary of the Stack-Gibbs Lumber Company and the Dryad Lumber Company, you signed it didn't you?

A. That is correct.

Q. And C. D. Gibbs as President of the Stack-Gibbs Lumber Company—you know his signature, he signed it in your presence didn't he?

A. I do not remember.

Q. You know that is his signature?

A. It looks like his signature.

Q. And B. G. Nelson, President of the Dryad Lumber Company, you know that is his signature?

A. Looks like his signature. (85)

Q. You know the signatures of those two men?

A. Yes, I certainly do; I say it looks like them.

Q. And the seals attached thereto are the seals of those two corporations, you put them on didn't you?

A. No, I didn't put them on, but they are on.

Q. They are the seals of the corporation?

A. Yes sir.

Q. Who did put them on if you didn't?

A. Mr. Cleland I believe.

Q. And several copies of this were executed were they not?

A. Yes, quite a number of them.

Q. And you delivered one or more copies to the Mechanics Loan & Trust Company or somebody representing them?

A. I believe I sent them all to the Exchange National Bank.

Q. You think you sent them all down here?

A. Yes sir.

Q. You got one or more back that purported to be signed by the Mechanics Loan & Trust Company?

A. I did not, there were so many signed that I do not know what happened to them afterwards and what was done with them; I know all we signed we hadn't got—only those in the minute book.

Q. That is you got the one in the minute book?

A. Yes.

Q. Now the instrument I hold in my hand purports to be acknowledged February 29th, do you know whether that is correct or not?

A. Well it ought to be correct. (86)

Q. That is a fact, isn't it?

A. Why sure.

The Referee: You know the instrument was acknowledged on the day it purports to have been acknowledged?

A. Yes, pretty sure of it.

Mr. Post: I now offer it in evidence.

Mr. Adams: We still maintain our objection, that is only one of the parties to the contract.

Mr. Post: I will prove the execution if necessary, but it isn't necessary so far as binding these people is concerned; you gentlemen admit don't you that these creditors have signed it and that is their signatures.

Mr. Adams: I have stated that so far as the two clients I represent are concerned we would not raise any question as to their signatures so far as this

document was concerned, but in no other way do we admit the authority of any other person named in that document excepting to save the counsel for Petitioner the trouble of taking depositions.

Mr. Canfield: I admit Mr. Searle and Mrs. Gibbs signed it.

Mr. Post: You admit the signatures of the Fort Dearborn National Bank and Merrill Cox & Company to this paper.

Mr. Adams: For the purpose of this hearing only, yes.

Mr. Post: And you admit Searle and Gibbs?

Mr. Canfield: Yes.

Mr. Post: And Mr. Danson, you admit Mr. Hess?

Mr. Danson: I think so, let me see it.

Mr. Post: And Mrs. Tolerton?

Mr. Danson: Yes, I do not admit they signed on this date, however. (87)

Mr. Post: I will prove when they signed it.

Mr. Danson: Yes, I admit that is their signatures.

Mr. Post: You also admit the First National Bank of Lincoln, Nebraska, was Searle, don't you?

Mr. Canfield: Oh yes, undoubtedly.

Mr. Post: You are familiar with the signatures of the Shoshone Lumber Company and E. L. Carpenter are you not?

A. I am not acquainted with them, that is, the only time I have looked at their signatures is right now.

Q. Or J. K. Stack?

A. Yes, J. K. Stack's signature I know, that looks like his.

Q. I guess there is no question about it; I will supply the proof as to these other signatures.

The Referee: Very well. Without deciding the question of the admissibility at this time, it will be overruled and admitted.

Mr. Canfield: I desire to object further on the ground that there is no showing here among our other objections, there is no showing that ninety per cent of them of the then existing creditors of the Stack-Gibbs Lumber Company signed that instrument; the instrument by its terms provides that it shall be absolutely no effect and shall not take effect until signed by ninety per cent of the creditors.

Mr. Post: That is on another question, not on the admissibility of the document but a question of the construction of it, and the effect of it.

The Referee: The ruling will stand.

(Whereupon the Trust Deed referred to was admitted in evidence, (88) and was marked Exhibit 14. This is the trust deed attached to the petition of Mechanics Loan & Trust Company and referred to in stockholders' meeting, Exhibit 3.)

Q. Did you at some time begin to act as the agent of the Mechanics Loan & Trust Company up there at Gibbs, Idaho, in relation to the Stack-Gibbs Lumber Company?

A. I would really like to know what you mean by agent in which respect before I can answer that question.



Q. Do you know what the word "agent" means?

A. It means in respect to.

The Referee: Tell what you did and leave it to the court.

The Witness: I took up the duties of Secretary-Treasurer of the Stack-Gibbs Lumber Company and the Dryad Lumber Company respectively.

Q. Did you have any conversation with anybody? Did you have any correspondence with anybody connected with the Mechanics Loan & Trust Company in relation to your taking up the duties of operating that business as the agent of that company?

A. Well, not with the Mechanics Loan & Trust Company, unless Mr. Coman is an officer of the Mechanics Loan & Trust Company. I do not know that.

Q. Did you have a conversation with Mr. Coman about it?

A. I talked with Mr. Coman about the affairs of the company frequently.

Q. Did you have a conversation with Mr. Coman about taking up the duties and performing the duties of representing the Mechanics Loan & Trust Company under this Trust Deed that has been put in evidence?

A. Well it was never specifically mentioned but we talked about it.

Q. When did you first talk about it?

A. I can't tell the date.

Q. How long had you been here before you first talked with Mr. Coman about it?

A. I guess it was some time afterward.

Q. How long? (90)

A. Maybe that same week for all I know.

Q. What did he say to you on the subject of your taking possession up there for the Mechanics Loan & Trust Company and operating the plant under the terms of that Trust Deed that is in evidence here?

A. It was never put to me that way because I was never running the plant to begin with. I wouldn't have had the ability to do it at that time; they simply talked over the affairs of the company, especially from a financial standpoint only you might say.

Q. Did you have any conversation at any time with Mr. Coman about your being the man to carry out the duties of the Mechanics Loan & Trust Company under that Trust Deed as defined under that Trust Deed?

A. Well I do not remember—we talked about it, but I do not remember the Trust Deed mentioned any specific duties of myself.

Q. You do remember the Trust Deed provides that the Mechanics Loan & Trust Company shall take possession of the property and that thereafter—

A. I remember that.

Q. Sell it for the benefit of the creditors and in their discretion operate the mill, etc., you remember all that?

A. I remember that.

Q. Did you have any talk with Mr. Coman about your being the man on the ground who would be

the representative of the Mechanics Loan & Trust Company in doing those things whatever was to be done?

A. I suppose it was taken for granted, but he didn't point it out specifically. (91)

The Witness: After I came here, I remember Mr. Coman asked me the first question, "I guess you know what you have to do," and I said, "Of course I am the poorest informed man I ever knew for a job like this." I wasn't informed, I didn't know what I had to do about it and the only time I got it, got a real good look into that Trust Deed was when you brought it out to the mill. I do not know whether it was February 18th or not. I mean on the date of the stockholders meeting, (92) but at that time I looked at it and read it and considered myself, then I was the man to confer with Mr. Coman about those affairs.

Mr. Canfield: I move to strike out what he thought it was.

Mr. Adams: Yes, I make the same motion.

The Referee: I will let the matter stand, simply stating his feelings of relationship.

I noticed that my name was specifically mentioned in the Trust Deed. The Deed was drawn up in Minneapolis, that is, I don't know where it was drawn but I know it was talked over in Minneapolis. (93) I was told I was to be elected Secretary-Treasurer of the Stack-Gibbs Lumber Company. In regard to what I was told in Chicago in regard to the Trust Deed being drawn, this assignment for the benefit

of the creditors, part of it I was told and part I wasn't. I knew a trust agreement had been drawn but I didn't know it was an assignment for the benefit of creditors, didn't know those details, because I didn't see it until I came out here. Mr. Aaron told me about it in Chicago. (94) Mr. Aaron was the only man I talked about it with in Chicago. I formerly stated it was Mr. Tilden but I am now convinced that it was Mr. Aaron who talked to me about it. (95) Mr. Aaron told me that Mr. Gibbs had very bad luck in his business and that he was connected with either incompetent or dishonest people, that he needed somebody who knew finances and the lumber business and I was just the right man for it; that Mr. Coman was supposed to be the Trustee as I remember, called the Trustee agreement—it means to overlook the affairs of the company, that I should assist him. (98) After I got out here and talked with Mr. Coman, I remember distinctly, "I guess you know what you have to do." I told him that wasn't the case, I was not informed when I left, I had no—I didn't know my duties yet—and I would have to work into them and when I was out there for a while I would learn more about it; Mr. Coman evidently took it for granted that I knew. I was not informed as much as Mr. Coman thought. After that I had conversations with Mr. Coman and people connected with the Exchange National Bank and Mechanics Loan & Trust Company in respect as to what I ought to do. I do not remember that I had any talk with you, Mr. Post about it. (99)

Mr. Post: Didn't I tell you, Mr. Katz, when we were up there on February 18th, they passed that resolution authorizing this Trust Deed, you were there, would be there in possession as the representative of the Mechanics Loan & Trust Company to carry out the functions to be performed by it under that Trust Deed?

A. I am almost positive that you did not.

Q. Did I on any other occasion say that to you?

A. I do not think I ever met you again outside of that meeting outside of one occasion which I had nothing to do with.

I had some correspondence with the Mechanics Loan & Trust Company in relation to the subject. That correspondence ought to be here. Here is one that refers to it. I see that the letters are all mixed. Here is a letter you were asking about, March 23rd, that is when I got that letter you referred to, (100) and here is a letter of March 24th from them.

Mr. Post: I offer in evidence these two letters, Marked Exhibit 15 and 16. Exhibit 15, admitted in evidence, is a letter dated March 23, 1916, from J. V. Rea, Manager, Mechanics Loan & Trust Company, to S. Katz, stating that he encloses a copy of a letter received from Attorney F. T. Post outlining the duties and responsibilities under the trust deed and asking Mr. Katz to prepare a general inventory as of the date "we assumed control under the trust deed," also a statement of all cash receipts "since we have been in charge," and the source of payment and nature of debt; a statement of all disbursements, segregated in certain ways; also a copy of the pay-



roll each pay-day. The attorney's letter to the trust company dated March 17, 1916, states that the trust deed provides for immediate possession of the property, and "that you have already done through the person of S. Katz, your agent." It advises that a letter be received from the Stack-Gibbs Lumber Company stating that it recognizes Mr. Katz as the agent of the trust company and that the latter is in possession of the property. It advises the obtaining of an inventory of the assets, a trial balance of each company, a statement of the moneys on hand at the time the trustee assumed the trust, and that the trustee should have from its agent at frequent intervals reports showing the business transacted, trial balances, etc.

Exhibit 16 is a letter signed by Mr. Katz to the trust company, dated March 24th, acknowledging receipt of the two letters constituting Exhibit 15, stating: "In reply, I wish to say that I will be in Spokane next week and talk over with you the manner of keeping you instructed about the transactions of the two companies, as well as about all other matters;" also stating, "I want to hand you two letters from the Stack-Gibbs Lumber Company and the Dryad Lumber Company in compliance with paragraph 1 of Mr. Post's letter."

The Witness: I believe that I wrote another letter in response to the letter of March 23rd on March 31st in relation to this same subject. (101) The two letters that I have just handed to you were signed by the President and not me, however.

Mr. Post: I offer in evidence Exhibits 17 and 18. Each letter is dated March 24, 1916. One is signed by the president of the Stack-Gibbs Lumber Company, and the other is signed by the president of the Dryad Lumber Company, and each letter is addressed to the Mechanics Loan & Trust Company and states: "I hereby wish to inform you that we recognize Mr. S. Katz as your agent, in compliance with the trust agreement of the creditors of our company dated February 1, 1916."

(No objection.) I also offer in evidence a letter of March 31st which is marked Exhibit 19. (No objection.) This is a letter dated March 31st to the trust company, signed by Mr. Katz, stating: "In further compliance with your letter of March 23rd in regard to Mr. Post's letter, I hereby hand you two letters in reference to paragraph 2 of his letter, asking for inventory of the assets of the two companies."

Mr. Post: I offer in evidence two letters marked Exhibits 20 and 21.

(Which were admitted without objection.) (103) Exhibit 20 is a letter dated March 31, 1916, signed by Stack-Gibbs Lumber Company, by Gibbs, President, and Katz, Secretary, and begins: "I hereby wish to give you a list of the assets which we turned over to you on February 1st as trustee for our company." The figures in the letter as to assets according to books show the value thereof to be \$1,440,526.10.

Exhibit 21 is a similar letter in relation to the assets of Dryad Lumber Company.

The Witness: Within six or seven days after I got here, I sent to Mr. Rea, secretary of the Mechanics Loan & Trust Company, a daily statement of the cash receipts and the nature of the debts paid. I sent these to him every day and I sent them the same statements that I sent to the bank. Yes, I sent them to the Fort Dearborn National Bank and the Exchange Bank and I believe to Merrill, Cox & Company. I didn't bother afterwards where they went to, they were mechanically sent out of the office. (104) The paper that you hand me is the kind of a statement that I sent out on February 21st, 1916, and the kind that I sent daily to those people.

Mr. Post: I offer this statement in evidence marked Exhibit No. 22. (No objection.)

The Witness: In regard to the correspondence that I had with the Mechanics Loan & Trust Company, the letters passed between the Mechanics Loan & Trust Company and Stack-Gibbs Lumber Company, I personally didn't get any letters; but I saw them all. (105) This seems to be the first letter February 19, that came from the Mechanics Loan & Trust Company, and that one I gave you seems to be the first one that my signature was attached to. I mean, that is the first letter after I arrived. There does not seem to be any letters between February 1st and February 19th. This seems to be the first letter in the month of February, February 18th, 19th and 21st; they are all February letters every one of them, and these are the earliest letters. The letter you hand me I think is the first I wrote to them. Now in regard to my correspondence with the

Merrill, Cox & Company, I did not keep any copies of the letters I wrote to them, but I wrote a few letters to them at various times. (107) That is my private correspondence. I took good care to throw it away as soon as I wrote a letter. I didn't keep copies. I showed Mr. Coman a copy of every letter that I wrote to them and this included even my private correspondence, but I did not keep any copies. I sent either Merrill, Cox & Company a copy or I occasionally addressed a letter to Merrill, Cox & Company and gave Mr. Coman's copy of it; the reasons I didn't keep those copies was I didn't want anybody in the office to see them. I had no confidential correspondence with the Fort Dearborn National Bank. (108) I did not keep the letters I received from Merrill, Cox & Company either. Mr. Weinstein did not get any of this correspondence either and I do not believe that he saw it. (109)

Mr. Post: I offer in evidence two letters marked Exhibits 23 and 24. (No objection.) Exhibit 23 is a letter dated March 7, 1916, from Mr. Katz to Mr. Coman, stating that he encloses a copy of a letter which was written to Chicago.

Exhibit 24 is a letter dated March 7, 1916, from Mr. Katz to Merrill, Cox & Company, stating a list of expenditures made and to be made, and followed with: "So far, of the \$100,000 additional credit, we have used up to March 1st \$70,000 leaving a borrowing capacity of \$30,000 against a shortage of \$37,500."

Q. Did you get a wire from Merrill, Cox & Company?

A. I did. (111)

Mr. Post: I offer in evidence telegram as follows: "March 13, 1916, Stack-Gibbs Lumber Company, Coeur d'Alene, Idaho. Satisfactory us and Fort Dearborn to postpone payment interest writing, Merrill, Cox & Company."

The Witness: Merrill, Cox & Company confirmed the telegram by letter and I showed the letter to Mr. Coman. It was written to the Mechanics Loan & Trust Company and related to this matter.

This letter was marked Exhibit No. 25 and introduced and admitted in evidence. (112) Exhibit No. 25 is a letter from Merrill, Cox & Company to Mechanics Loan & Trust Company, dated March 20, 1916, stating that they have received a letter, quoting a letter from Mr. Katz in regard to the postponement of payment of interest on the obligations of Stack-Gibbs Lumber Company and "we have already written Mr. Katz, agreeing to this proposition."

Mr. Post produced a letter marked Petitioner's Exhibit No. 26 and introduced it in evidence without objection. This is a letter dated March 14, 1916, signed by Mechanics Loan & Trust Company and Exchange National Bank, addressed to Stack-Gibbs Lumber Company and Dryad Lumber Company, C. D. Gibbs, Merrill, Cox & Company, Fort Dearborn National Bnk, I. F. Searle, Shoshone Lumber Company, Idaho Timber Company, S. H. Hess, J. K. Stack, Genevieve Hess Tolerton and Mrs. M. A. Gibbs, and states that on February 18, 1916, the trust company wrote a letter to each of said parties



that paragraph 20 of the trust deed contained an ambiguity as pointed out by the attorneys, and that the intention of said paragraph was to a certain effect, and asking each of said parties to return a letter agreeing to the statement contained as to the intention of said paragraph 20, and further stating that the trust company had received from each of said parties a statement agreeing as to the intention of said paragraph 20, and further stating that the bonds issued by the Dryad Lumber Company referred to in the trust deed, are owned by the Exchange National Bank, and that the maturity thereof is extended for the period of two years, as provided in said paragraph 20, according to its intent and meaning, as agreed upon.

Mr. Post: Now Mr. Katz, you have already testified to the disbursement of \$60,000.00 of the money obtained from the Mechanics Loan & Trust Company and I desire to go on from that point as to what was done with the \$40,000.00 after that?

Mr. Adams: I desire to make an objection to the statement of counsel that Mr. Katz testified what was done with the \$60,000.00. Mr. Katz testified to certain payments—whether that was \$60,000.00 received from the Exchange National Bank I submit the evidence does not show. (114)

Mr. Post: I had him verify their correctness by going through the books starting in with the refund payment to Bardwell-Robinson, and Lambert Lumber Company, logging contract, pay-roll, bank overdrafts, etc.

Mr. Adams: You had him verify certain items

here paid by the Stack-Gibbs Lumber Company, but the witness did not testify that they were paid out of the \$60,000.00.

The Witness: Not all of them, I just picked out the amounts you told me, I do not know whether every item is down here—if I would know exactly where the money went I would have to read every item one after another and classify them afterwards; the same thing with the \$40,000.00; that extends over a period—the last I think you said was May 11th, I am sure we paid out during this time something like \$300,000.00; the \$40,000.00 wasn't the only money we got in and it would be impossible for me or anybody else to tell where those \$40,000.00 went; they went in with the other money we received.

Mr. Post: We will go back to this subject; this letter says that during this period the time from February 10th to February 22nd, in addition to the \$60,000.00 (115) you received from shipments the sum of \$8500.00; I want you to tell me whether that is true or isn't true?

A. I will look it up.

The witness here detailed various receipts by the Stack-Gibbs Lumber Company. (116)

Mr. Post: Now the period following that, how are we going to get at the matter of the next \$40,000.00?

A. Well I think it is an impossibility; I explained the matter to Mr. Coman and got his consent to draw the rest of the money out; now why we were short and what we paid with it, we paid all kinds of things

with it, we paid notes, we paid pay-rolls, we paid—well almost everything; it went in all kinds of channels, that money and to separate it (118) is impossible; in fact, the \$40,000 is a small part of those receipts we had during those months because we were shipping about \$150,000 a month.

Q. When did you borrow the first money after February 22nd, was there any more borrowed in February between that time and March 1st?

A. Yes sir.

Mr. Adams: This is in the record once and I do not want to go to the expense of having the record written up twice.

The Witness: After February 22nd?

Mr. Post: Between that and March 1st.

A. February 24, one, February 26—

Q. So there was \$10,000?

A. \$10,000.

Q. Can you testify in the same way as to what happened to that \$10,000 making up a statement?

A. Oh yes, I can in other words show all the receipts between February 22nd and February 29th and all the expenditures and classify it. (119)

Q. Starting with March 1st and the next ten days or two weeks, how much money did you get by borrowing from the Mechanics Loan & Trust Company?

A. March 4, \$5,000; March 8, \$5,000; March 10, \$5,000.

Q. There is ten days, can't you make up a statement for that ten days also?

A. Surely, you mean a separate statement?

Q. That is up to \$85,000 now March 10th or for the next ten days of the first of April what did you borrow?

A. March 15th we borrowed \$2500 and I think that was all in March, but of course this \$2500 is only a minor part of what we got in, that period.

Q. When did you next borrow some money?

A. April 8th, \$5,000.

Q. As I understand you, when you got in the hole sufficiently so that you felt you needed to borrow some money, about that time you went to Mr. Coman or the Mechanics Loan & Trust Company and got it?

A. I went to Mr. Coman.

Q. So I judge on April 8th you must have been in the hole?

A. Evidently.

Q. You can tell what happened to that \$5,000 can't you?

A. Yes we spent it.

Q. But you can tell where you spent it and you can tell what your balance was April 8th when you got that money?

A. I can only tell you that after I got the \$5,000, I can give you a list of what was spent or the next \$5,000 that was spent, but those \$5,000 might not be the \$5,000 because evidently we had other receipts.

Q. But you can tell what happened for two or three days of your receipts and expenditures?

A. I can give you a list of what we took in and spent.

Q. All right, do that.

A. For what period?

Q. When was the next date after April 8th you got more money?

A. I think it was May 11th; I remember it from this morning, \$2,500.

Q. You got two Twenty-five Hundred Dollars May 11th?

A. No, from the Mechanics we got \$2,500 and from the Exchange Bank we got \$5,000. (121)

The Witness: I wasn't asked anything further; we borrowed July 10th from the Exchange National Bank, \$5,000 and paid it back the 12th of July and the 15th of July \$2,500 each. Mr. Coman let us have that money for a few days.

I have not my correspondence with the Fort Dearborn National Bank here but I will have it here Monday for you.

Whereupon an adjournment was taken until 9:30 A. M. Monday, January 8, 1916. (123)

The witness, Katz, was temporarily relieved from further testimony while other testimony was taken.

Thereupon William H. Kaye, being called as a witness on behalf of the Mechanics Loan & Trust Company, after being duly sworn, testified as follows:

#### TESTIMONY OF WILLIAM H. KAYE.

##### *Direct Examination.*

Examined by Mr. Post:

My name is William H. Kaye. I live in Spokane and am the Assistant Secretary of the Mechanics



Loan & Trust Company, having held that position for about three years. The paper marked Exhibit No. 26 is a letter that was signed by me as Assistant Secretary of the Mechanics Loan & Trust Company. On March 14, 1916, I sent that letter to the different people to whom it is addressed, in the usual way. I knew their addresses (127). At that time Mr. Huntley was President of the Mechanics Loan & Trust Company and still is. He signed the trust deed as President of the Mechanics Loan & Trust Company and I signed it as Assistant Secretary and attached the corporate seal. We both acknowledged the instrument in the usual way, before a Notary Public, Mr. Flood.

*Cross Examination.*

By Mr. Adams:

I do not recall the day that we signed the Trust Deed but it was the same day it was acknowledged before Mr. Flood. The instrument appears to have been signed on February 29, 1916. I saw Mr. Huntley sign it. (128) I did not talk with Mr. Coman at the time we executed it.

Witness excused. (129)

Siegmund Katz, being recalled for further

*Direct Examination.*

By Mr. Post:

The Witness: After we adjourned, I found the figures a little different from February 10th to February 22nd and I have made out a schedule of that. This is it, February 10th to 21st inclusive; I believe I can explain it to you better by reading it to

you. Referring to my letter dated February 22nd, Exhibit 10, the sum total of disbursements set forth in that letter is \$68,500.00 but I find the same should be \$76,000.00. I find it to be \$76,000. I do not know if I told you the last time, at that time the auditors were here and there was nothing posted and the trial balance for February didn't get through until the 18th of March and I am inclined to think when Mr. Cleland gave me those figures I could not check them up just coming here, gave them to me out of his memory because I even find of the \$60,000 which we borrowed up to February 22nd, they had received up to February 22nd only credit for \$55,000; the other \$5,000 wasn't credited until February 24th and what I have gotten up here is absolutely correct because I got it from the books as they were posted. (130) The auditor was Mr. Treiber of William Weber Company, a Chicago concern. I do not know who sent him here; I remember Mr. Gibbs told me he was once around previously and made such an impression on him and engaged him again. Referring to this statement, my letter, Exhibit 10, all of the accounts are correct but as to the pay-roll, I couldn't tell out of the book, we have only an amount there to the Dryad Lumber Company.

Mr. Post: That would be the same thing wouldn't it?

A. No, it is not exactly, it is the pay-roll and bills for supplies for the mill. (132)

The Witness: That amount is \$18,500, while in the letter, Exhibit 10, it is \$18,200.00. There was

no bank overdraft back—there was a bank balance of February 10th, \$8,693; then there was overdraft of \$6,000, consequently instead of the bank's balance decreasing there is a difference of \$15,000 paid to the bank, or \$14,600 to be correct, and it seems there is a note or two notes of the Exchange National Bank in Spokane, one of \$10,000 and one of \$5,000. They were paid on February 15th. In reference to when they were given, I will have to look up in the book, the bills payable; December 30, 1915, notes No. 7366 and No. 7367, first one \$10,000, next one \$5,000, demand notes. It was paid already on the 15th day before I came, in fact it is the first time I knew about it when I went over the books. (133)

Mr. Post: What makes up that item of \$12,000?

The Witness: I suppose that meant the note in Spokane, I can't see it any other way because on February 10th when you take the balance of the banks we had on hand in the banks \$6,893 and February 22nd at the end of this report, we were overdrawn in the bank at Spokane \$6,000 according to our books. The freight on logs seems to be \$7,595.85, the interest is \$2,000 and the accounts payable interest, about \$1,000. In my former statement I found the item, salary, \$1,608.71 wasn't in there which was paid during that period of time and according to my books, the total amount paid during that period of time was \$76,380.59. The amount received from all other sources except the Mechanics Loan & Trust Company, was about \$6,000, and the balance which we had on hand, about \$8,600, alto-

gether we had \$14,000 at our disposal aside from the loan. (134)

Q. And Fourteen Thousand from Seventy-six leaves Sixty-two Thousand or something like that, and the loan was Sixty; is that correct?

A. No, the loan during this time according to our books was only Fifty-five; the notes must have been held in the Mechanics Loan & Trust Company and we must have written them to credit us with them, \$20,000 notes here given the Mechanics Loan & Trust Company when Mr. Gibbs was in Spokane on the 16th of February and I do not find we were credited with them immediately; we were credited with them as we needed the money.

The Witness: Now, the next period of time, I then took up the receipts and expenditures including February 22nd. Up to the end of the month, February 29th inclusive; during this time, we received in loans \$14,930 from the Mechanics Loan & Trust Company, I guess in one note the interest was deducted immediately. The sales amounted to \$7,308 and a little freight claim, \$38.00, total \$22,276; overdraft \$6,000 to be deducted from that, leaves for disbursement \$16,276. The overdraft which we had on the day previous, February 21st. It was paid during this period between February 22nd and February 29th. (135) There was an overdraft at the Exchange National Bank. Aside from the overdraft, we paid \$16,276 in the following way; salaries and expenses \$276, interest \$3,325, for the Dryad Lumber Company \$3,750, accounts payable, \$535, freight on logs \$1,262, log contrac-

tors \$3,918, and we paid three notes of \$2,505, one the Exchange National Bank note, \$1,002, and one Fidelity National \$1,003 and \$500 Spokane & Eastern Trust Company and we paid the Mechanics for Mrs. Tolerton \$350 to be sent to Mrs. Tolerton. That makes a total of \$16,276. There was nothing left at the end of this period; about \$1,000 was left maybe; the next period I took up was March 1st to March 10th, inclusive, loans Mechanics Loan & Trust Company \$15,000, three notes; there were sales from which we collected \$6,770 and a few other items \$173; had a balance of \$1,000 on hand yet, so that left for disbursement \$22,943; our expenditures were as follows during that period, Dryad Lumber Company \$12,000, for pay-roll and supplies, accounts payable \$880. That was for various little bills; logging contractors \$5000; interest \$147; freight on logs \$2,792 and salaries \$1,202, making a total of \$22,221. (136)

Now in reference to the letters that I wrote to the Mechanics Loan & Trust Company, the earliest letter that I have here is February 18th.

Mr. Post: I have one here of February 17th; I will show you this one of February 17th, that is Mr. Cleland's handwriting is it not, letter sent to the Mechanics Loan & Trust Company?

A. Yes.

Q. You got the copy there of one sent February 18th have you?

A. Yes.

Q. And February 21st, and is that all during the



first period 10th to 22nd you find in the correspondence?

A. Yes.

Mr. Post: I offer these three letters together as one exhibit.

Whereupon the letters were admitted in evidence as Exhibit No. 27. One letter is dated February 17 to Mechanics Loan & Trust Company and states: "Herewith our ninety-day notes Nos. 7414 and 7415 for \$5,000 each, which kindly discount, depositing proceeds to our account at Exchange National Bank, Spokane, Washington, advising us of the amount of discount."

One letter dated February 18th to said trust company states: "Herewith our ninety-day note No. 7416 for \$5,000, which kindly discount, depositing proceeds to our account at Exchange National Bank, Spokane, Washington, advising us of amount of discount."

The other letter is dated February 21st to said trust company and states: "Herewith our ninety-day note dated February 16, 1916, due May 16, 1916, for \$5,000, which please discount, depositing the amount to our credit in Exchange National Bank, Spokane."

Q. The next period we were to take up February 22nd to February 29th? Do you find any letters in that period?

The Witness: That is all (handing them to him).

Mr. Post: I offer this one in evidence, this one of February 26th, sending a note for \$5,000 and

saying, "Will draw on you until March 10th to the extent of \$20,000," signed by Mr. Katz.

The letter was admitted to evidence and marked Exhibit No. 28. This is a letter dated February 26th to said trust company and states: "We hereby hand you our ninety-day note No. 7432 for \$5,000, which you will kindly discount and place proceeds to our credit with the Exchange National Bank on Monday. In accordance with letter sent to Mr. Co-man on February 23rd, we will draw on you until March 10th to the extent of \$20,000. The note which you credited to us February 24th and today's note are against this loan, leaving balance of \$20,000 yet to be drawn."

The Witness: I have two letters between March 1st to the 10th.

Mr. Post: I offer these four letters as one exhibit.

Four letters as Exhibit No. 29 were admitted in evidence. (138) One letter dated March 1st to said Trust company states: "Last Saturday we sent you our note for \$5,000, asking you to place the proceeds to our credit with Exchange National Bank. Up to date we have not received any notice that the proceeds of this note were credited to us. We have already drawn against this amount under the presumption that we would receive credit immediately upon receipt of the note, and we are afraid that our checks will be turned down."

One letter is dated March 8, 1916, to said trust company, and states: "We hereby hand you our note of \$5,000 for ninety days and will kindly ask you to

credit us with proceeds of same at Exchange National Bank, Spokane.”

One letter is dated March 8, 1916, to said trust company, and states: “We hereby hand you our note for \$5,000, the receipt of which you will credit to our account with the Exchange National Bank.”

The other letter is dated March 10, 1916, to said trust company and states: “We hereby hand you our note for \$5,000, receipt of which you will credit as usual to our account with the Exchange National Bank. We wish you would kindly attend to this today because we want to draw it for our payroll.”

Q. At the conclusion of the reading of the last letter as follows, “wants the money next day for the payroll,” that is the way you understood it at that time?

Mr. Katz: Surely.

Q. Going back to your figures, the next period is March 10th up to what time?

A. I stopped on March 15th; you told me from the day you got the loans until afterwards—on March 15th.

Q. You gave a note for \$5,000?

A. No, \$2,500, so I have given from March 15th to 18th inclusive; during this time received from sales \$6,483 and loans \$2,500, as the loan register mentions, total receipts \$8,983; expenditures during that same period were for Mrs. Tolerton \$350, loggers \$1,364, Dryad Lumber Company \$1,725, accounts \$349, salaries \$333 and freight on logs \$2,387, total \$6,583, left a balance in the bank of \$2,000.

Q. Why did you want that \$2,500?

A. I do not know any more, but evidently we expected to pay something that didn't come in; it was spent all right afterwards because we borrowed some more money, the reason was I got tired of having only five or ten cents in the bank, wanted to have a little balance in case something came in; on the day I borrowed we undoubtedly had no money on hand at all and the receipts came in in excess of what I expected—one of the exceptions.

Q. When was the next period there—the next period is the time you borrowed some more money I suppose?

A. Yes, April 8th, April 8th to 12th inclusive; received from the Mechanics Loan & Trust Company \$5,000, through sales \$6,941 and a few other small items \$135, total \$12,076; we paid to logging contractors and our own logging at the time, \$2,345, accounts \$28, salaries \$1,120, Dryad Lumber Company \$7,350, Mrs. Tolerton \$350, freight \$67, total \$11,460, leaving a few hundred dollars in the bank.

Q. On April 8th you wrote them a letter did you not? (139)

A. I haven't got it here, you must have that. It starts here May 8th.

The Witness: I considered it necessary to get this money to cover the payrolls.

Mr. Post: I offer a letter in evidence.

It was admitted and marked Exhibit No. 30. This letter dated April 8, 1916, to Mechanics Loan & Trust Company, says: "Enclosed please find our note for \$5,000, the proceeds of which you will kind-

ly deposit for our account at the Exchange National Bank. We will appreciate it if you will attend to the receipt of this letter, as proceeds are necessary to cover payroll.”

The Witness: The next was May 11th, covering the period from May 11th to 15th inclusive, received loans Mechanics Loan & Trust Company \$2,500, Exchange National Bank \$5,000, total \$7,500; besides this we received from sales \$11,936, \$72 through another item, total \$19,508. I mean the Exchange National Bank of Spokane. Dryad Lumber Company, \$16,100 for pay-roll and supplies, notes \$880 Stanton Meat house, \$686 freight on logs; \$547 logging contractors and our own logging; \$936 salaries; a total of \$19,149. (140)

Q. You got Exchange National Bank, May 11th, \$5,000, do you know how that happened?

A. Yes, I remember now, I saw Mr. Green at the Exchange Bank, and I think Mr. Coman was out of town at the time, and I expected the receipts would come in right away so I said I would have to take up the last \$5,000 and I would rather get \$2,500 on demand notes and the receipts would come in, but the receipts didn't come in, and that is how it was in the name of the Exchange Bank instead of Mechanics Loan & Trust Company. As to what I understood in regard to this loan, I do not remember any more what I said about it. I thought we would get it only for a few days and pay it back, so Mr. Green gave it to me from the Exchange Bank in demand notes; it happened even a few times after that.



Q. Start looking over these notes. I want to know whether the last notes given to the Mechanics Loan & Trust Company or to the persons named therein—

A. These are the unpaid notes, \$100,000.00.

Q. Those notes I hand you are the unpaid notes, these are the last ones?

A. Yes sir.

Q. And they have not been paid in whole or in part?

A. No.

Q. And they are all signed by you are they not?

A. Yes sir.

Mr. Post: I offer them in evidence with the privileges of withdrawing them.

The Referee: It is understood that you will substitute copies.

Mr. Post: We have got copies already attached to our proof of claim.

The notes referred to were admitted in evidence as one exhibit, 22 in number, marked Petitioner's Exhibit 31 and admitted. (143)

A brief description of said notes is as follows:

Eight notes, dated May 9, 1916, each payable to the order of Mechanics Loan & Trust Co., and each is signed "Stack-Gibbs Lumber Company, by C. D. Gibbs, Pres., by S. Katz, Secy.; each is for the principal sum of \$5,000, and the interest rate is six per cent, and each is endorsed as follows: "Without recourse, pay to the order of.....Mechanics Loan & Trust Co., W. H. Kay, Assistant Secy."

Three notes dated May 11, 1916; each signed same as the others, except in place of C. D. Gibbs, Pres., appears H. F. Cleland, Vice President. Each is for the sum of \$2,500. One is payable to the order of Mechanics Loan & Trust Company, and the others payable to the order of the Exchange National Bank of Spokane. Each note is endorsed on the back: "Without recourse, pay to the order of.....Mechanics Loan & Trust Company, by J. V. Rea, Secy."

Four notes dated May 16th, 1916, each is for the sum of \$5,000; interest rate six per cent; each payable 90 days after date to the order of the Exchange National Bank of Spokane, each signed the same as the others, and each endorsed on the back thereof the same as the others.

One note is dated May 24, 1916, payable 90 days after date, for \$5,000, to order of Mechanics Loan & Trust Co., interest 6 per cent, signed and endorsed same as the others.

One note dated May 26th, 1916, for \$5,000, payable 90 days after date, to the order of Mechanics Loan & Trust Co., six per cent interest, signed and endorsed the same as the others.

One note dated June 5th, 1916, for \$5,000, payable 90 days after date to order of Mechanics Loan & Trust Co.; six per cent interest, signed and endorsed the same as the others.

One note dated June 6, 1916, for \$5,000, payable 90 days after date, to the order of Mechanics Loan & Trust Co., signed and endorsed the same as the others.

One note dated June 8, 1916, for \$5,000, payable 90 days after date to the order of Mechanics Loan & Trust Co., six per cent interest, signed and endorsed the same as the others.

One note dated June 13th, 1916, for \$2,500, payable 90 days after date, to the order of Mechanics Loan & Trust Co., six per cent interest, signed and endorsed the same as the others.

One note dated July 7th, 1916, for \$5,000, payable 90 days after date, to the order of Mechanics Loan & Trust Co., signed and endorsed the same as the others.

Mr. Post: I offer in evidence as one exhibit all the cancelled notes of the Mechanics Loan & Trust Company.

Whereupon the notes referred to, nineteen in number, were admitted as one exhibit and marked "Petitioner's Exhibit No. 32" and admitted.

Said Exhibit is briefly described as follows:

Nineteen (19) promissory notes, each for the sum of \$5,000, each payable to the order of the Mechanics Loan & Trust Company, each bearing interest at the rate of six per cent per annum, each endorsed: "Pay to the order of.....without recourse. Mechanics Loan & Trust Company, by J. V. Rea, Secy.;" each by its terms due ninety (90) days after date; eight (8) of said notes being dated February 9th, 1916, and signed Stack-Gibbs Lumber Company, by C. D. Gibbs, Pres.; four (4) of said notes are dated February 16th, 1916, signed Stack-Gibbs Lumber Company, by C. D. Gibbs, Pres., by S. Katz, Secy.

Seven (7) of said notes, dated respectively, February 24, February 26, March 4, March 8, March 10, March 15, and April 8, 1916, said seven notes being signed Stack-Gibbs Lumber Company, by C. D. Gibbs, Pres., by S. Katz, Secy.

Each of said notes bears the cancellation stamp of the Exchange National Bank dated as of the date when the renewal note was given.

Q. From the time that you arrived there at Gibbs, Idaho, to the time that this concern was thrown into bankruptcy, you were very active and energetic in the management of that business, weren't you?

A. Well, I was working together with Mr. Gibbs and consulting with Mr. Coman.

Q. What I am getting at is, you were very active and energetic; you were Johnny-on-the-spot all the time?

A. I think I was.

The Witness: At the time I came here, we owed the Atlas Tie Company to the amount of about \$10,000 or \$11,000. The way we paid it off was not through cash payments but through the sale of logs; they were manufacturing ties from a cheap grade of fir and tamarack, and this amount we owed them was part of an advance on those logs and the advance was evidenced with notes and whenever we shipped the logs we were credited on those notes. On January 1st it was \$17,274.42, and when I got here in February it was reduced some and the rest of it was paid off by logs.

Q. I wish you would turn to the account of the First Security National Bank of Minneapolis, and see how much was owing them when you came here.

A. It was bills payable \$25,000 we owed them—it was not through an open account, they were cancelled through a mutual agreement in Minneapolis in that meeting I understand, at least I was told when I came, there was a Trustee Fund called the C. D. Gibbs Trustee Fund, \$112,000 on the books which was supposed to represent their interest in the timber land and he bought at one time as scrip, I believe for the First Security National Bank of Minneapolis (144) in favor of Shevlin-Carpenter people; they made an agreement that Mr. Gibbs should forego his interest in that and that on the other side they would take up those notes themselves and consequently the notes were canceled so far as the Stack-Gibbs Lumber Company was concerned.

Q. You understood that it was fixed up in Minneapolis that way at the creditors' meeting in January or February whenever it was?

A. That was told me when I came and consequently the \$25,000 was stricken out of the books and as assets the \$112,000 was stricken out of the books, by a reduction of the book assets of about \$87,000.

#### CROSS-EXAMINATION.

By Mr. Adams:

The Witness: The renewals of the notes about which I have testified, were not delivered personally but I think were sent by mail, but I talked about the



renewals to Mr. Coman occasionally. I would quite often go in and see him (145). The initials on the notes, O. K. E. T. C. was the signature of E. T. Coman, the same gentleman that I talked to. Upon my arrival in Spokane on February 16th, I saw Mr. Coman at the bank on my second visit there. The notes that you are showing me, I signed on February 16th in the afternoon, (146) at Mr. Coman's office. Those notes were signed on the third visit I made to the bank that day; I made three visits. On the second visit I made an appointment with him, and about half past four in the afternoon after Mr. Gibbs had come to the bank and when I came back Mr. Gibbs and Mr. Coman were together already and then I was asked to sign those notes that you have just shown me. There was nothing said at the time except a few introductory remarks. Mr. Coman told me that Mr. Gibbs was a very able man, that he was especially a great lumber salesman and I should try to get along with him tactfully. The whole tone of the conversation and subsequent conversations was to get the confidence of the people and get their friendship and find out what is due the (147) firm and get along the best I can, getting the company in the best shape possible.

Q. You find an item on the 15th of \$15,000 credited to the Exchange National Bank; when was your attention first drawn to that item?

A. Practically this morning when I looked through the books; I saw at a glance when I talked to you on Saturday—

Q. Who do you refer to by you?

A. Mr. Post, and we talked about that something must be wrong and I looked over it and that item of \$15,000; when I read those figures out of the books I wasn't asked about it and I didn't mention it.

Q. Was that a part of your first \$40,000 paid out of those notes that we discounted?

A. It must have been.

Q. How was the balance of that overdraft made up of \$6,000; wasn't there a \$5,000 note discounted a few days afterward which helped make up this \$6,000 overdraft, which helped to pay the Exchange Bank?

A. There was still an overdraft left.

Q. While that overdraft was left did you put in another \$5,000 note?

A. Yes, in order to square that overdraft we put in another \$5,000 note on February 24th.

Q. One of those same notes, this note of February 24th that was canceled and afterward renewed?

A. That is correct (148).

Q. Did you write the Fort Dearborn that you had found \$15,000 of notes of the Exchange Bank that you had paid?

A. I did not write it to anybody, I did not know it.

Q. There had been an entry made on the books showing all the money paid out for that purpose at that time?

Mr. Post: What purpose?

Mr. Adams: To pay the Exchange Bank out of this \$40,000?

A. It shows here an entry in the check register.

Q. When was that put on there?

A. February 15th.

Q. Was it actually entered on February 15th?

A. Yes.

Q. How did you happen not to see it then, Mr. Katz?

A. Because I never looked at the books then at that time, I wasn't here on February 15th.

Q. On February 16th did you look at it?

A. No, I do not think anything was posted in the books until the end of the month.

Q. That is what I understood you to say?

A. The whole month of February there was nothing posted in the books.

Q. It wasn't on there February 16th when you got there?

A. No, there was nothing on there for the whole month of February, I remember that. (149.)

Q. Has the Exchange Bank ever accounted to you or the Stack-Gibbs Lumber Company for any \$15,000 security or anything of that kind since you have been here?

A. No.

Q. Have they turned back to you \$15,000 on account of that item of \$15,000?

A. Not that I know of.

Q. Did they give you the canceled notes representing that \$15,000?

A. Well, after I saw—I went to the office yesterday to see if I could find it and I can't find them, and they were not there; there is a whole file of canceled notes there from that period and those two notes were not there.

Q. Does the entry of the original notes show in the bills payable?

A. They show December 30, 1915.

Q. And the numbers?

A. Yes, sir, with the numbers.

Q. Give us the numbers of those notes for the record?

A. No. 7366, \$10,000; No. 7367, \$5,000.

Mr. Adams: We would like to have Mr. Post or Mr. Coman within reasonable time produce those two notes.

The Witness: In regard to my testimony of writing certain letters to Merrill, Cox & Company, certain confidential letters, I wrote three or four and went into the Davenport Hotel, but I went as a rule to Mr. Coman's private office (150) and he had a lady secretary and dictated my letters, and one time I remember Mr. Coman was not able to give me the stenographer and I went to the Davenport Hotel. How I happened to go to Mr. Coman's office, as Secretary and Treasurer I wasn't supposed to make reports to anybody without the consent of the President or at least with his knowledge, and I didn't feel that there was any official Secretary-Treasurer, it was something of a private nature and Mr. Coman was supposed to handle the affairs here as Trustee and I thought he ought to know about it before anybody else and for this reason I went to his office and dictated the letters there; in some cases I believe I kept a copy and threw it away then and in other cases I didn't keep a copy at all, simply gave one to Mr. Coman and sent one along; any way Mr.

Coman always saw the letters before they left. He consented to everything that I wrote. I remember I wrote only once a confidential letter to J. D. Finley also in Mr. Coman's office, but Mr. Coman censored it at the time, at that time he wouldn't permit me to send it off in that form and I wrote a different one. (151.) In regard to my impression as to when I met Mr. Post, I thought it was about two weeks after I got here. That is a matter of memory; my impression is that it was later; since yesterday I have looked up those minutes and find they were drawn up, in fact I remember that they were drawn up in Spokane before Mr. Coman came out here. Before Mr. Post came out here, those minutes were not drawn up in the office at Gibbs, they were drawn up in Spokane somewhere because Mr. Post brought them along and I know Mr. Post came out on the morning train, 8:45 or 9:00 o'clock it was at that time, and I see by those minutes that the date is written in already the 18th, I mean dictated in Spokane, and I am inclined to believe more than ever that we had not that meeting on the 18th but those minutes were dictated on the 18th in Spokane and brought out; how much later I could not say, as I said before, so I couldn't say positively.

I had no business dealings with Mr. Kaye in the discounting of the notes or in talking to him. As far as the Spokane people were concerned, the individual that I had the business dealings with was Mr. Coman. At least he was the only person who had the authority in the matter. (152.) With reference to the minute book, on page 20 that you show



me here, all of the parties recited there to be present were present except Mr. Tolerton. (153.) Mr. Coman did not tell me anything about taking possession and notifying the people that I was in possession. I was told to take good care that nobody else would find out about it, this Trustee agreement was to be kept absolutely strictly secret before anybody else; I remember at one time the representative of Dun's or Bradstreet's found it out and one time when I was in Spokane called me up at the Exchange Bank and told me to come over and had a talk with me and I was suspicious of that talk and asked Mr. Coman about it, what I should tell him, and Mr. Coman gave me the advice to say that we do not expect to ask for additional credit and to refuse all information, which I did. (154.) We had several conversations, that is, Mr. Coman and I, of this character. I couldn't remember all, but we had a few conversations about that topic. Mr. Coman, that I am referring to, is the President of the Exchange National Bank of Spokane, the same gentleman who is here.

#### REDIRECT EXAMINATION.

By Mr. Post:

The first time that I ever saw the letter signed by the Fort Dearborn National Bank, Merrill, Cox & Company and all these other people who signed the Trust Deed in relation to keeping the Trust Deed off the record, the letter addressed to the Mechanics Loan & Trust Company, was when I saw the letter here. I never had a copy of the Trust Agreement or that letter or anything until I came out here. This letter I never saw until I read it just now.

Now in regard to that meeting up there at Gibbs, Idaho, I want to be understood as saying the following: I was very much astonished the other day or when you showed me the book because I was under the impression that it was later, but I wouldn't testify under oath for that is a thing a little too much back. (156.) I never had any correspondence with the Fort Dearborn National Bank. I met Mr. Gibbs in Chicago before I came out here and was introduced to him by Mr. Aaron. I showed all the letters that I wrote to Merrill, Cox & Company to Mr. Coman. I wrote these letters because Mr. Tilden asked me as a favor, if I wouldn't let him know from time to time a little of what was going on. Mr. Tilden, I think, is one of the officers of Merrill, Cox & Company. I do not know whether he is an officer of the Fort Dearborn National Bank or not. (159.) I am not a stockholder of either one of the companies (Stack-Gibbs Lumber Company or Dryad Lumber Company) except to the extent of one share of stock which was put in my name to qualify me as a member of the Board of Directors and I have no financial interest in either of the companies outside of this one share of stock. I have already given you the reason why I wrote the confidential letters to Merrill, Cox & Company—because Mr. Tilden asked me to write these letters, and as I said before I got permission of Mr. Coman or rather Mr. Coman knew about it. I gather from the Trust Deed that Mr. Coman met some representatives of Merrill, Cox & Company in Minneapolis. (161.) I think I am familiar with the signature of Mr. Tilden.

Mr. Post: I will show you a letter marked Exhibit 33 for identification and ask you if that is the signature of Mr. Tilden you refer to as Treasurer of Merrill, Cox & Company?

A. I did not refer to him as Treasurer of Merrill, Cox & Company because I do not know what office he holds but that seems to be his signature.

The Witness: That is the Mr. Tilden I am talking about. I am not familiar with the signature of John Fletcher; I know the signature of Mr. Aaron and the signature attached to Exhibit 34 for identification is Mr. Aaron's signature.

Mr. Post: Now Mr. Katz, in respect to the \$15,000 you have been talking about, don't your books show there that those notes were subsequently canceled, as a matter of fact the \$15,000 represented by those notes was never used by the Stack-Gibbs Lumber Company?

Mr. Adams: I object to that, the witness can not be led; let the witness tell if he knows anything about it.

The Referee: The objection is overruled.

Mr. Adams: Note an exception.

The Witness: The books show that if that note would not have been in existence there would have been an overdraft in the bank right there, consequently it must have been used, they had a balance in the bank of \$8,000, which was undoubtedly on account of that \$15,000 note or part of it to the extent of \$8,000 and the minute that note was paid, there was an overdraft of \$6,000.

Q. I want you to show me that on the books?

A. On February 14th the Exchange National Bank of Spokane showed a balance on hand in favor of the Stack-Gibbs Lumber Company of practically \$6,300; see here deposits with Exchange \$78,496.04; withdrawals, \$72,084.13; the 15th the first entry is \$15,000 Exchange Bank, notes \$10,000 and \$5,000, No. 7366-77, canceled, bills payable \$15,000. On the end of that day the Spokane Bank showed an overdraft of about \$8,000.

Q. It says there that those two notes were canceled, the Exchange National Bank's notes 7366 and 7367 canceled?

A. That is what it says on the books.

Q. That is not a usual entry in the books when notes were paid is it to mark them canceled?

A. The bills payable it is marked paid.

The Witness: That just depends on the books; I wouldn't say there was any rule about it. The same bookkeeper wrote paid in one book and canceled in the other. I find on February 15th another note was paid, \$1,172.04, Powell-Sanders, but it does not use the word canceled or paid, simply says Powell-Sanders note. In bills payable it shows a charge on bills payable, consequently it must have been paid on a note. (146.)

(Whereupon adjournment was taken until January 8th, 1917, at 1:30 P. M.)

On the resumption of Court, Mr. Katz resumed the stand under

## REDIRECT EXAMINATION

By Mr. Post:

The Witness: I remember a Mr. Joe Richards, an accountant, going over the books. I can't tell you what he did; I gave him only the trial balance and told him where the books were, and told him I couldn't give him any information. He didn't go over any questions with me. I am showing you the book, entry February 15th. This book has all the records in it for several years up to 1916. (165.) The cash book here shows our deposits in the Exchange National Bank. I do not know when the account was opened but it must be long ago. The first record in this book is January 24th. This entry shows all the transactions between January 1st and 24th.

Mr. Coman: These are not entries, are they? They are balances.

The Witness: The total checks deposited in the Bank during the month, \$103,645.92, shows here (indicating on the ledger) it simply was posted at different times at the end of the month, it had to agree, and the same things you had on the checks, withdrawals, \$88,573.94 only one entry made at the end of the month of the withdrawals.

Mr. Post: If a note was discounted on a certain date would that show on the books?

A. No, not in the ledger, bills payable don't show in the account of that particular firm because they are charged. Referring to the items of the \$10,000.00 note and the \$5,000.00 note I find an entry



on the books of date February 16th, 1916, as follows: "\$15,000.00 Exchange Bank note 7366 and 7367 \$10,000.00 and \$5,000.00, respectively; cancelled, bills payable" (167) I am reading now from the check register, sheet 168. The page in the cash receipts book was 200.

Q. It appears in the cash book somewhere on February 15th?

A. No, it should not, the cash receipt book don't show anything but cash receipts; as we made the deposits to the bank the total amount was transferred to the check register here; in the check register you have an account deposit which shows the deposits with the explanation and the explanations are given in the cash receipt book; these explanations you find here are disbursements, drawn against the deposits. It has to appear here and once more under deposits.

Q. On February 15th it appears in some other book?

A. That is something I would like to find myself.

Q. I thought you said it appeared in the notes register?

A. Yes, sir, as being paid. (168.)

The Witness: Bills payable shows next to the notes I mentioned, 7366-67, the word "paid"; the amount \$10,000.00 and \$5,000.00 are stricken out in red ink and behind each word is the word "Paid" in red ink. It shows the name of the Exchange National Bank of Spokane. There is no page number to this, it is among those notes which were issued at the time, at the end of December and the begin-

ning of January. The date of the note is December 30th, 1915.

Mr. Post: I wish to ask you this in regard to that, the other notes that are marked "paid", state the times that they were paid don't they, under "when due" it is written in red ink the memorandum showing when due, and under the next when paid; the memorandum showing when paid; now as to these two notes—there is nothing under "when due" or "when paid," no entry at all?

A. It shows when they were paid.

Q. Is there?

A. You asked me two questions at one time.

Q. I want you to answer as it appears here you have the words "when due" right in the middle of that page?

A. Yes.

Q. And every other note on that page there is a memorandum under those words "when due"? (169.)

A. Yes, sir, whenever the note—it is a demand note and this is nothing but months.

Q. You are arguing with me. I am trying to find out what the fact is. There is a memorandum everywhere except as to these two notes.

A. That is correct.

Q. Now, when paid there is also in black ink "when paid" and three columns?

A. Yes.

Q. And as to every other note there is a statement made "when paid"?

A. No, there isn't, I see only the statement is here, I notice they wrote under this head the amount of interest.

Mr. Adams: We would like to have all the records go (171) in evidence and copied and be substituted for them if the court pleases.

The Referee: Very well.

Mr. Post: I am offering in evidence these two pages.

Mr. Adams: No objection.

The Referee: They will be admitted.

Whereupon the pages referred to were admitted in evidence and marked petitioner's Exhibits No. 35 and 36 respectively.

The Witness: Now referring to the last page—the last page of my certified copy of the minutes of the stockholders' meeting purporting to be held on February 18, 1916, was written by my stenographer in my office. (172.) The certificate was not dictated by me, it was undoubtedly dictated by Mr. Cleland, who was attending to all these matters at that time. I was the Secretary and Treasurer because I didn't know anything about it. Now referring to the time that Mr. Tolerton signed these minutes, if I remember right, he came out some day with Mr. Gibbs, but I really don't know the date it was but it was (173) quite a little while afterwards. I know he wasn't there the same day and if it was the next day I can't tell you, but I know he wasn't there for a little while anyhow.

## RE-CROSS EXAMINATION.

By Mr. Adams:

Q. I wish you would tell the court where it shows and what the entry is of the receipt of the \$15,000.00, the discount on the \$15,000.00 note, you read the item from the "bills payable" book where it appears in your book?

Q. The first time it appears on December 31st, 1915, on page 200 in the cash receipts book.

Q. Will you read that item, please, entire item, I want to give it now in the order it appears?

A. It reads \$10,000.00 "bills payable" No. 7366, general account \$10,000.00. \$5,000.00 "bills payable" No. 7367, general account \$5,000.00, deposit in S, (meaning Spokane) \$15,000.00.

Q. Now where does it next appear, the next place referring to that particular item?

A. On February 12th.

Q. Will you look in your "deposit account" please in December and January and see if it shows the receipt of that two deposits under the Exchange National Bank of Spokane?

A. That is right, it shows on December 31st.

Q. Tell the Court what you are looking at, what is the book? (174.)

A. I am looking at the check register that shows, that part of it that shows the deposits.

Q. With what Bank?

A. The Exchange National Bank of Spokane.

Q. Please read that entry into the record?

A. Page 152, the first half of the page under de-

posits, Exchange National Bank of Spokane in the amount of \$15,000.00, that is all it shows.

Mr. Adams: May it please the Court so that there may be no misunderstanding, we ask leave to have the entire page copied in the record.

Mr. Post: I have no objection; I would like to have it.

WHEREUPON the page referred to was ordered admitted in evidence and marked Petitioner's Exhibit No. 36 $\frac{1}{2}$  and admitted.

Mr. Adams: Will you tell the Court what was the balance in the Exchange National Bank to the Stack-Gibbs Lumber Company starting with the first day of January, 1916?

A. The first of January the deposit to the Exchange Bank of Spokane was \$28,195.77.

Q. Will you tell us whether or not in making up that item of twenty-eight thousand and some odd dollars, was included in the \$15,000.00?

A. Yes, it was included in the \$15,000.00.

Q. Now will you turn to the latter part of January, now at the end of January what was the bank balance in the Exchange National Bank of Spokane?

A. \$10,074.11. (175.)

Q. Now, starting with the first of February of this same book—I do not mean starting—let us take it down here to February 14th—now on the 14th of February, 1916, what was the state of the account just before that item was charged, what was the total withdrawals and the total deposits?

A. Total deposits, \$78,496.04. The total withdrawals, \$72,084.13.



Q. So you had a balance of approximately six thousand dollars in the bank?

A. Correct.

Q. When the \$15,000.00 was taken out of your bank balance how much did you have left, or what was the condition of it?

A. It was overdrawn about \$9,000.00.

Q. How was that overdraft finally made up, how did you pay the bank that overdraft?

A. Well, I guess any money that came in, money through notes and the money through deposits.

Q. Didn't you deposit and discount one of these five thousand dollar notes in this controversy here?

A. Yes.

Q. That went into that account to make up that balance?

A. Undoubtedly. (178.)

Mr. Post: When was that deposited?

A. \$10,000.00 on the 19th.

Mr. Adams: On the 19th \$10,000.00 was used, then what was the condition of this account with the Exchange when you used \$10,000.00 of these notes?

A. Well, we still had \$5,000.00 overdrawn.

Q. You were still \$5,000.00 to the bad?

A. Yes—we kept drawing checks.

Q. Will you go to page 169 under the date of the 24th and see if you used another \$5,000.00 note?

A. The next one we used on the 21st.

The Witness: On the 21st we deposited \$5,000.00, the interest—\$4,925.00 net, and we were still overdrawn about \$6,000.00; and on the 24th we were

still overdrawn on the 24th. We caught up on—no still three hundred missing (177) on the end of the 28th.

There was then offered and received in evidence, pages 152 to 169 inclusive.

Mr. Adams: Mr. Katz, during the period of time that I have just offered the records in evidence was there any other money paid the Exchange Bank other than the \$15,000.00?

A. I find on page 153 of the check register under "withdrawals" Exchange National Bank, Spokane, the amount of \$10,178.20 on the 5th day of January, Dryad Farms, Dryad Lumber Company, \$10,000.00 charges to the general ledger account, that is all.

Q. For the purpose of the record, will you tell the Court, please, what this is, what Company's record you have been reading from?

A. Stack-Gibbs Lumber Company.

Q And this money you now refer to was money paid out of the Stack-Gibbs Lumber Company account to pay the bond of the Dryad Lumber Company?

A. Yes, sir.

Mr. Adams: We now offer—we have no objection to the whole book—we want to offer between those two dates, December 30, 1915, up to February 29th, 1916, the book that the Stack-Gibbs Lumber Company entitled on the outside "check register transfer and cash book"; and ask leave from Mr. Katz to have duplicate sheets made of these in lieu of the originals and file them in the record?

The Referee: Leave is granted to prepare full, true and correct copies of those exhibits and that they may be filed as substitutes for the originals. (The sheets referred to were admitted in evidence as Exhibit No. 36A.) (179.)

RE-DIRECT EXAMINATION.

By Mr. Post:

Q. Where is that entry about the bond?

The Witness: (Indicates, record before him.)

Q. What date is that?

A. January 8th, 1916.

Q. That was in the month before you came here and you knew nothing about it until what is here in the book?

A. That is all I can testify to.

Q. Except that you do know that the Dryad Lumber Company was an employee of the Stack-Gibbs Lumber Company and they were owing them and paying them money all the time?

A. Who was owing?

Q. The Dryad Lumber Company was paying the Stack-Gibbs Lumber Company or paying—the Stack-Gibbs Lumber Company were paying the Dryad Lumber Company or paying the creditors of the Dryad Lumber Company every few days.

A. We deposited it for the Dryad Lumber Company and they paid it out themselves.

Q. Was this \$10,000.00 charged on January 5th to the Dryad Lumber Company?

A. Yes, sir, it was charged to the Dryad Lumber Company. (180.)

RE-CROSS EXAMINATION.

By Mr. Adams:

.... Q. Was the Stack-Gibbs Lumber Company indebted to the Dryad Lumber Company on the 5th day of January, 1916, can you tell us?

A. I know that by memory, but I can show you that the Stack-Gibbs Lumber Company was a creditor of the Dryad.

Q. To what extent?

A. I think \$135,000.00.

Mr. Post: If we are going into that, you know that was fudged, don't you?

A. Well, before answering that question, I would like to have a clear definition of that word.

Q. You know that wasn't. The Dryad didn't honestly owe the Stack-Gibbs Lumber Company one hundred thirty thousand odd dollars or anything of the kind.

A. Well, not all of it. I know what you refer to, certain dividends, but they were only \$125,000—\$126,000.

Q. That is, there was \$126,000.00 of this alleged credit that wasn't on the square?

A. I will let somebody else judge that.

Q. You say you know as to \$126,000.00 of it that wasn't honest and true?

A. It does not look like it.

Q. So as a matter of fact—I am informed that your Honor already has made a finding that the Dryad didn't owe the Stack-Gibbs—which is a Mechanics lien matter?

Witness: I think that was a personal act by somebody else and that is why I wouldn't dare to testify. (181.)

Q. You have already testified in response to your counsel's—excuse me, Mr. Adams—the gentleman from Chicago—they were a creditor. That is not correct, is it?

A. I am not going to testify to that. I am not competent, inasmuch as it was found already.

Q. The Stack-Gibbs Lumber Company employed the Dryad to do certain work for them that you refer to?

A. That is correct.

Q. And there was a running account where they owed them for this work, and owed them and paid them, and paid them and owed them, and that was going on for some time?

A. I don't think that there was a running account. I don't think the Stack-Gibbs Lumber Company caught up with it.

Q. They never caught up that \$126,000?

A. I don't think they are worth anything.

Q. The Dryad, they were closely affiliated corporations; Mr. Gibbs and Mr. Tolerton owned practically all the stock of the Dryad; that is correct, isn't it?

A. Yes, that is correct.

Q. And Mr. Gibbs and Mr. Tolerton owned practically all the stock of the Stack-Gibbs Lumber Company?

A. That is correct, also.

The witness excused. (182.)



E. T. Coman, being called as a witness on behalf of the Petitioner, and being first duly sworn, testified as follows:

TESTIMONY OF E. T. COMAN.  
DIRECT EXAMINATION.

By Mr. Post:

My name is E. T. Coman. I live in Spokane and I am President of the Exchange National Bank, having filled that office for six or seven years. I am also a member of the Board of Trustees of the Mechanics Loan & Trust Company and the other members of said Board were Mr. Rea, Mr. William Huntley, C. E. McBroom and O. M. Green. Mr. Huntley is vice-president of the Exchange National Bank, as is also Mr. Green. Mr. McBroom is cashier of the bank and Mr. Huntley is the president of the Mechanics Loan & Trust Company (183) I think Mr. Green is the vice-president of the Mechanics Loan & Trust Company. Some time in the month of January, I went East with C. D. Gibbs of the Stack-Gibbs Lumber Company to meet some of his larger creditors; that was in the latter part of January, 1916. We went to Minneapolis and there met Mr. Carpenter, Mr. E. L. Carpenter, I think it is, there was a Mr. Howard, they called him "Bob," but I think his name was Howard, they always referred to him as "Bob," but if there is any question about his identity he was the man who was very hard of hearing and the confidential man of the Shevlin, Carpenter Company; Mr. Aaron, Mr. Tomlinson, Mr. Hess, Mr. John Fletcher, Mr. Hovey, Clark was not in the conference

but he came in occasionally to advise us about some transaction in which the Shevlin-Clark interests were concerned. Mr. Searle was there and I omitted C. D. Gibbs. Now there were bookkeepers and stenographers came in and out. The meeting was held at the office of Mr. Carpenter. (184.) Mr. Carpenter represents the Shevlin-Carpenter Lumber Company and he is a trustee of the Shevlin Estate and officer of the Idaho Timber Company and the Shoshone Lumber Company and a director of the Security Bank. We were in Minneapolis for two or three days. Mr. Howard was connected with the same people that Mr. Carpenter was and Mr. Aaron is the attorney for Merrill, Cox & Company of Chicago and the Fort Dearborn National Bank of Chicago. Mr. Tomlinson was connected with Merrill, Cox & Company and Mr. Fletcher is the vice-president of the Fort Dearborn National Bank. The subject that was under consideration was the refinancing and the extension of the obligations due the Stack-Gibbs Lumber Company to their various creditors with a view of getting them in a condition to continue their operation. I was asked to go down to Minneapolis by Mr. Gibbs. The Stack-Gibbs Lumber Company did business with our bank. (185.) Our bank was also the owner of the bonds of the Dryad Lumber Company. Before we went East, there was a Trust Deed prepared in Spokane by Mr. Post, but that is not the Trust Deed that was finally signed. The Trust Deed that is in evidence here, Exhibit 14, was prepared by Mr. H. J. Aaron. As I recall, there were five copies of it made or had in Minneapolis.

The Trust Agreement was signed on the day indicated in the instrument, February 1st, 1916, at Minneapolis. It was executed by Merrill, Cox—we were all sitting around the table something like that and these whose names I give you signed right then, Merrill, Cox & Company by H. J. Aaron (186). It was done in the presence of Mr. Tomlinson of Merrill, Cox & Company, but I wouldn't be positive about that because Mr. Tomlinson left after we had come to an agreement and went back to Chicago, I think ahead of the others. The Fort Dearborn National Bank was signed by H. J. Aaron right there and Mr. Fletcher of the bank was there when Mr. Aaron signed; he is the vice-president of the bank. Mr. Fletcher did not sign, but told Mr. Aaron to sign and I heard him. It was in my presence. Mr. Searle was there and signed. The First National Bank of Lincoln had no one representing them but Mr. Searle, he signed to that as it appears there; I signed for the Exchange National Bank, the Shoshone Lumber Company was signed by Mr. Carpenter and the Idaho Timber Company was signed by Mr. Carpenter; F. H. Hess signed that himself. The signatures of J. K. Stack and Genevieve Hess Tolerton and Mrs. M. A. Gibbs were obtained subsequent to that time. (187.) There was considerable discussion as to the way of putting up \$100,000.00 or that part of it that might be used as is referred in the Trust Deed. The greater part of the discussion was before the signing of the contract, if there was any after, I do not recall it. We discussed it all the time we were there, but as to which day it was talked about or

which hour I couldn't say. (188.) The capitalization of the Mechanics Loan & Trust Company in January and February, 1916, was \$10,000.00. (189.) While I was in Minneapolis, I wrote a letter to J. K. Stack and sent him this agreement that had been signed by the other gentlemen and I kept a duplicate of that letter.

Mr. Post: I offer petitioners' Exhibit No. 37 in evidence.

(And it was admitted without objection.) This letter dated February 2, 1916, states that Mr. Coman is enclosing five copies of the trust deed in question, signed by various creditors, together with two letters signed by the creditors, addressed to Mechanics Loan & Trust Company, and "if these documents meet with your approval, will you kindly execute the same for the amount owing you, which from the books appears to be \$110,000. Upon the completion of the documents, kindly forward to me by registered mail, care Exchange National Bank, Spokane;" also, "this arrangement has been a result of a conference of the different creditors of Mr. Gibbs, concerns representing more than ninety per cent. of the indebtedness. It seems to all concerned to be the best plan to conserve the assets of the concerns and at the same time protect the interests of the creditors." There is attached a postscript saying that it appears that the representatives of one of the creditors, a Chicago party, did not come with proper authority to sign, and therefore that the documents be sent to H. J. Aaron, Fort Dearborn National Bank Building, 76 Monroe street, Chicago."

The Witness: I received a letter from Mr. Stack, which I now hand you. (193.)

Whereupon Mr. Post introduced the letter, marked Exhibit No. 38, in evidence. This letter from Mr. Stack to Mr. Coman acknowledges receipt of the five copies of the trust deed and two letters, and states that he has signed same and forwarded to Mr. Aaron. Witness produces a duplicate of one of these letters and states that the same was signed by the creditors there present in Minneapolis, and the same was offered and received in evidence and marked Exhibit No. 39. Said letter is dated February 1, 1916, is addressed to Mechanics Loan & Trust Company, and states: "We, the undersigned creditors of Stack-Gibbs Lumber Company, have executed as creditors the deed of trust to you given by said company, and request that while you shall take possession at once of the property described therein and perform all your duties under the trust deed, you shall not at this time place said deed of trust of record until you shall believe, under the advice of counsel, that it is necessary so to do, in order to protect our rights in the premises, especially as against other creditors. We understand, of course, that if this deed of trust is not put of record, it will be possible for the lumber company to make some conveyances of property, but we have not the slightest fear of anything of that kind being done, and feel that it is for the best interests of the creditors, as well as the lumber company, that as little notoriety as possible be given to this trust, and



for that reason suggest that you do not place said instrument of record until you feel that the same is imperative." The letter is signed "Merrill, Cox & Company, by H. J. Aaron, its attorney; Fort Dearborn National Bank, by H. J. Aaron, its attorney; I. F. Searle; First National Bank of Lincoln, Nebraska, by I. F. Searle; The Exchange National Bank of Spokane, by Edwin T. Coman, President; Shoshone Lumber Company, E. L. Carpenter, President; Idaho Timber Company, E. L. Carpenter, Treasurer; S. H. Hess; J. K. Stack; Genevieve Hess Tolerton; Mrs. M. A. Gibbs."

Mr. Post: I offer in evidence petitioner's Exhibit No. 39.

There being no objection the letter was received in evidence. (194.)

The Witness: The reference in this letter to Mr. Stack, Exhibit 38, to the arrangement being the result of a conference of the different creditors, representing 90% of the indebtedness, was based upon a statement of the assets and liabilities as submitted by Mr. Gibbs at Minneapolis and a copy of that statement was furnished not only to us but to all the other creditors there and the way we figured it out was that when it was signed by Mrs. Tolerton that that completed the necessary signatures. That is, to make up 90%, but in that connection, the secured creditors were not submitted.

Mr. Adams: I move to strike that out as a voluntary statement without any question.

The Referee: It may be stricken.

Mr. Post: I now offer in evidence, two telegrams, marked Petitioner's Exhibits No. 40 and 41.

There being no objection, the same were received. Exhibit No. 40 is a telegram from Mr. Coman to Mr. Stack, dated February 27, 1916, saying: "Please advise by prompt wire if you have received my letter of second with enclosures. Before trustee can act and make advances provided for under agreement, necessary that the signature of yourself and one other creditor be added. Some matters are pressing and prompt action necessary."

Exhibit No. 41 is a telegram from Mr. Stack to Mr. Coman, dated February 8th, saying: "Papers signed fifth and forwarded to Mr. Aaron, Chicago, same date, registered mail."

The Witness: Matters were pressing and some contracts were necessary. (195.) Creditors were pressing for payment of claims, labor was unpaid, loggers were demanding settlement for their accounts and it seemed as though there was danger of the company being forced into the hands of a receiver; in fact there were rumors that application for a receiver might be made. On February 5th I received a telegram from Mr. Aaron in relation to this matter and I got another one on the 7th and another one on the 9th.

Mr. Post: I offer in evidence these three telegrams, marked Petitioner's Exhibits 42, 43 and 44, which were admitted without objection.

Exhibit No. 42 is a telegram from H. J. Aaron to Mr. Coman, dated February 5, 1916, saying:

“Contracts not yet returned by Stack. Can you hurry him?”

Exhibit No. 43 is a telegram from Mr. Aaron to Mr. Coman, dated February 7th, saying: “Contracts received. Now awaiting Mr. Tolerton’s signature. Will wire when secured.”

Exhibit No. 44 is a telegram from Mr. Aaron to Mr. Coman, dated February 9th, saying: “Contracts signed by Mrs. Tolerton yesterday. Mailing this morning.”

The Witness: On the 8th, I wrote a letter to Mr. Stack after getting these telegrams and also a letter to Mr. Aaron and the ones I hand you are duplicate copies of those two letters. (196.)

Mr. Post: I offer these two letters in evidence.

Mr. Adams: How are those letters signed? Exchange Bank, by you as president or simply your individual signature?

A. Well, just my individual signature over that name “president” which my stenographer puts in on all my letters.

Mr. Adams: Did she put in Exchange Bank above where you sign? (195.)

A. No.

The letters referred to were admitted in evidence, marked Petitioner’s Exhibit No. 45 and No. 46 respectively. Exhibit No. 45 is a letter from Mr. Coman to Mr. Stack, dated February 9th, saying: “I have your letter of the 5th and note contents. I wired you on the 7th with reference to this agreement. The necessity for urgent action is due to the need of proper authority on the part of the trust-

tee to put up the money urgently needed for the current payroll and to take care of some of the smaller creditors. I have received a wire from Chicago that Mrs. Tolerton has signed, and that finishes the execution of the agreement. It is immaterial whether any of the small creditors here sign or not, as it is the intention of the trustee to pay off any who show a disposition to make trouble."

Exhibit No. 46 is a letter from Mr. Coman to Mr. Aaron, dated February 9th, stating: "I am in receipt of a telegram under date of the 9th, advising that Mrs. Tolerton has signed the contracts. The trustee will go ahead and make the advances to take care of the payrolls due, in anticipation of the arrival of the contracts."

Mr. Post: (To Mr. Adams) I wish you would have your Chicago office, Merrill, Cox & Company, and the Fort Dearborn National Bank send out all the correspondence with Mr. Coman, Exchange National Bank, Mechanics Loan & Trust Company, Mr. Katz and the Stack-Gibbs Lumber Company from December 31st on to June 1st, January 1st to June 1st, 1916.

Mr. Adams: No objection at all, sir.

Mr. Post: Now, Mr. Coman, I see in this letter you state that it will be necessary to make some advances in anticipation of the arrival of the contract; tell the court whether or not Mr. Gibbs in Minneapolis orally concurred and agreed to that contract?

Mr. Adams: I object to that.

The Referee: On what ground?

Mr. Adams: Mr. Gibbs couldn't orally agree to a contract of this character, could he?

Mr. Post: He couldn't find a corporation to do it of course. (198)

Mr. Adams: It is up to the contract to be executed in due form as the contract provides.

Mr. Post: I do not contend it binds the corporation but it shows the attitude not only of Mr. Coman but also of Mr. Aaron and the other gentlemen who were in relation to it.

The Referee: The objection overruled, the answer may be taken for what it appears to be legally worth.

A. Yes, that is what he went down there for.

Mr. Post: In response to this letter to Mr. Aaron, where you say some advances would be made in anticipation of the arrival of the contract, did Mr. Aaron object to that by telegram or by letter?

A. No, sir.

Q. You got a letter from him in answer to that, did you not, and isn't that the letter?

A. Yes, sir.

Mr. Post: I offer this letter in evidence.

(Which was admitted in evidence as Petitioner's Exhibit No. 47.) This is a letter from Mr. Aaron to Mr. Coman, dated February 15th, acknowledging receipt of Mr. Coman's letter of the 9th inst., and saying: "You undoubtedly have my letter by this time enclosing executed contracts and advising you that Mr. Katz was going to leave Chicago on the 13th. He left Sunday night and will call on you on his arrival Wednesday morning."



The Witness: Mr. Aaron suggested Mr. Katz as the man to come out here and run the business. (199) He said by reason of their large interests here, they were entitled to have their man on the job to watch it and report to them and he knew that this man, he was a very able, capable man, familiar with the lumber business and he was particularly fitted for the financial end, which was the part that needed looking after. I do not remember anybody else at the meeting saying he was acquainted with Mr. Katz except Mr. Aaron. Mr. Katz was of course a stranger to me. Before the letter dated February 9th, I received a letter from Mr. Aaron.

Mr. Post: I offer this letter in evidence. (The letter was marked Exhibit No. 34 and received.) This is a letter from Mr. Aaron to Mr. Coman on the letterhead, Law Offices, Henry J. Aaron and Charles Aaron, 76 West Monroe street, Chicago, dated February 9th, stating that he enclosed five copies of trust agreement and two copies of letter signed by all the creditors, and that Mrs. Tolerton had signed both of such documents, and then states: "Will you please see to it that the schedule containing the description of the property of the Dryad Lumber Company is attached to each of the contracts? Also please see to it that the descriptions contained in the contracts are carefully checked, and when the corrections are made, will you please see to it that I get one of the original copies, and also send a copy of the schedule of the Dryad Lumber Company property to Mr. Wetmore at Minneapolis? Will you please also see to it that the meet-

ings of the stockholders of the Stack-Gibbs Lumber Company and the Dryad Lumber Company are held and Mr. Sigmund Katz is elected a director and secretary and treasurer of each of said companies? Will you also see to it that you get as trustee a transfer of the rights of the railroad company, which is a subsidiary company only, to the right of way and equipment? I do not now think of any other steps that you ought to take to protect your powers, but if you should think of any, please see to it that you get everything that you ought to have. Mr. Katz is leaving here Sunday for Spokane and will report to you the moment he arrives in your city. ”

The Witness: This letter refers to a Mr. Wetmore of Minneapolis, who was present at the conference. He was the man I think they called “Bob,” he was the Carpenter-Shevlin man and they always referred to him as “Bob.” (200)

Mr. Coman: When Mr. Katz arrived here, he presented me with a letter that I have in my hand, which is a first acquaintance I had with him.

Mr. Post: I offer this letter in evidence. (The letter marked Petitioner’s Exhibit No. 48 was admitted.) This letter is on the letterhead of the Fort Dearborn National Bank, Chicago, signed by John Fletcher, vice-president, to Mr. Coman, and says: “This letter will introduce the bearer, Mr. S. Katz, who will call upon you within a few days to take up his duties in connection with the Stack-Gibbs Lumber Company. We have asked Mr. Katz to report direct to you, under the understanding that he will

be made an officer and director of the two companies, as arranged in the agreement.”

Mr. Coman: After I returned to Spokane, I showed you (Mr. Post) the Trust Deed and you made some objections to paragraph twenty and the cause thereof were some letters to different parties, creditors and others.

Mr. Post: I wish to offer one of these in evidence with the statement who signed the rest of them.

“The letter referred to was admitted in evidence and marked Petitioner’s Exhibit No. 49, admitted, and was read by Mr. Post. This is a letter dated February 19, 1916, addressed to each of the parties who signed the trust agreement signed by Mechanics Loan & Trust Company, pointing out the ambiguity in paragraph 20 of the trust deed, and what was the real intent thereof, and asking for a confirmation thereof.

Mr. Post: This exhibit has signed to it, the name of Genevieve Tolerton—the other letters I have here, I will state they are in duplicate, the first one under the above letter conforms to our understanding the names of the Stack-Gibbs Lumber Company by C. D. Gibbs, Exchange National Bank, Spokane, E. T. Coman, President. Dryad Lumber Company by S. Katz and by H. F. Cleland, Vice-President; (204) the next one signed by C. D. Gibbs, the next one signed Merrill, Cox & Company by Averill Tilden, Treasurer, the next is signed Fort Dearborn National Bank by John Fletcher, Vice-President, next one is signed by I. F. Searle, the next one signed by Shoshone Lumber Company, E. L. Carpenter, Pres-

ident, the next one Idaho Timber Company, E. L. Carpenter, Treasurer, the next one signed S. H. Hess, the next one signed J. K. Stack. (205)

The Witness: As soon as the Mechanics Loan & Trust Company received a telegram from Mr. Aaron they commenced advancing money. I refer to the telegram saying that the document was completed, the Trust Agreement, nor did we stop because of the ambiguity here set forth in the letter. I had not doubt about the creditors and everybody agreeing to it because that was in accordance with our understanding. Now in regard to what the Mechanics Loan & Trust Company did, about taking possession of the property up there at Gibbs, the property of the Stack-Gibbs Lumber Company, Mr. Katz came into the office, and he was introduced to different ones. I do not think he was introduced to you (referring to Mr. Post) until the second day after he arrived, (206), if I remember right, and you prepared the papers that were necessary to carry out the Trust Agreement and left the bank to go with Mr. Katz to put him in charge. Mr. Katz and I had quite a conversation about the matter of his being in charge and in which he should handle the business under the Trust Agreement, explained our views of the situation and told him it was necessary to handle it diplomatically until he had gotten in possession of all the facts; told him Mr. Gibbs was recognized as an able lumber salesman, but was not a good financier, and he was particular to look after the office part of the business, watch the receipts and disbursements and to master the de-

tails of the business as rapidly as he could, that it would require some diplomacy on his part to go in there under the circumstances, and get along with Mr. Gibbs so that everything would work smoothly. Mr. Katz left his signature there at the bank on the instructions that all checks in the future should be countersigned by Mr. S. Katz. (207) In regard to the \$15,000 note referred to by Mr. Katz in his testimony dated December 31st, 1915, and marked on the book here as canceled or paid on February 14th, 1916, Mr. Gibbs was negotiating a loan based on some collateral that was to come from a lumber concern in Denver; the collateral never came and the arrangement was never perfected, and Mr. Gibbs was to have credited—I have got here a copy of the Stack-Gibbs Lumber Company account. The paper that I have in my hand is a copy of the Stack-Gibbs ledger account. It is a duplicate; we keep one copy and we send them one just like it, they are made at the same time and are made from day to day.

Mr. Coman: (Reading) There is the account of the Stack-Gibbs Lumber Company from January 1st, 1916, and you will notice that all during that month, there was no credit of such an amount. That item of \$15,000.00 was never put to the credit of the Stack-Gibbs Lumber Company. (208) The books of the Exchange National Bank and the books of the Stack-Gibbs Lumber Company would never agree, so you couldn't produce anything; they make an entry here when they send us a remittance, and we do not give them credit until a day or two afterwards, whenever the remittance comes in, and if it



is a Saturday or Sunday or a holiday like January 1st, it would mean they wouldn't get credit for a couple of days afterwards. They wouldn't correspond as to amount (209) unless they put a book-keeper on and reconciled them. On January 1st, 1916, they had a balance of \$202.25.

Mr. Post: I would like to know, Mr. Katz, what was the balance there on your books?

Mr. Katz: \$28,195.77.

Mr. Post: That includes the \$15,000 item?

Mr. Katz: Certainly, yes.

Mr. Coman: That \$15,000 item is not in our books at all, but I have some other books here that will show something about it. This only shows in a negative way that no such transaction took place between the Stack-Gibbs Lumber Company and the Exchange National Bank. This is a complete record of every loan made (210) between the 31st day of December and the 15th day of February, and it contains loans made to everybody else and if you gentlemen will agree on someone whom you will trust, I will prove it to them, but I do not care to have this go into the record for public inspection. The note register that I have here is for every one, not the Stack-Gibbs Lumber Company alone, but there was no such transaction took place between those dates. Mr. Gibbs brought in this \$15,000 note and promised to turn over some collaterals. There was an acceptance or an order on some firm in Denver, but it was never accepted by the Denver firm, as the collateral was never completed and we never gave him that credit. (211) In the Trust Deed the

Exchange National Bank signed for \$6,000 as their indebtedness. This matter that was in the air was discussed there. This \$15,000 they knew that we were not a claimant for that amount. We didn't have any such canceled notes as the loan was not made, the note would be turned over to Mr. Gibbs or somebody connected with the company, these are just copies of those you have now.

Q. I understand from Mr. Katz that he can't find any such papers, so I judge you turned it over to Mr. Gibbs and he tore them up or something of that kind; I will ask Mr. Katz now—any checks written to pay either one of these notes—there would have to be in order to pay the notes.

Mr. Katz: It is mentioned here as a bank memorandum.

Q. You make checks to pay notes, don't you?

Mr. Katz: It isn't always necessary.

Q. Ordinarily—

Mr. Katz: Oh, we might get a charge account from the bank and enter it on our books. (212)

Q. But when the Stack-Gibbs Lumber Company according to this system of bookkeeping paid off a note held by somebody they gave a check for the balance.

Mr. Katz: I can show you quite a few cases where that didn't happen.

Q. That was the custom, that was the rule?

Mr. Katz: It is the rule nine out of ten cases, but there is the tenth case where it does not happen.

Q. There wasn't any check given for these two notes, were there?

Mr. Katz: No.

The Referee: Was it the almost universal custom of the Stack-Gibbs Lumber Company to make these payments by check, or was it commonly the occurrence they were not paid by check but paid some other way?

Mr. Katz: It was the custom of some to pay by check and some it wasn't; I remember Merrill, Cox & Company for a month or two after I came I gave up that custom and simply reduced notes—Oh, that was renewal notes.

Q. Merrill, Cox & Company, all you did after you came here was to make renewal notes, but you would give them a check for the interest, is that what you did?

Mr. Katz: Yes, sir, that is what I wanted to say—the custom is usually to pay by check.

Mr. Adams: We would like to have his customers' ledger, daily bank balance—and the other matters I asked him to produce before taking up the cross examination. (213)

(No response seems to have been made to this suggestion.)

#### CROSS-EXAMINATION

By Mr. Adams: (214)

The Witness:

We keep a record every day showing our gross receipts and our gross bills receivable and we keep a customers' ledger and our tellers have a scratch book where they make all kinds of entries and these yellow sheets are a record of the customers' ac-

counts in the bank. We do not have any other customer account except this. The book that I have in my hand is the record of all the loans made by the bank. We keep a separate ledger account with our customers (214) and we kept a ledger account with the Mechanics Loan & Trust Company on our ledger.

Mr. Adams: Then what I would like to have on the 5th of February would be the daily balance books you would keep the record in the bank?

Mr. Post: During what time?

Mr. Adams: From the 15th of December up to the 15th of May, his customer's ledger?

Mr. Coman: I can't see how that can serve any purpose; I will show it to you down in Spokane, and let you see whether it can serve your purpose; it is very bulky volume.

Mr. Adams: Just small statements?

A. It is a book about that square (indicating).

Q. You mean your customers' ledger, or daily balance book?

A. Daily balance book, that contains the entry of every bank account, balances due banks and from banks and—

Q. Suppose you made an interest charge against one of your customers for an overdraft or for a note where will that show?

A. That would show on that sheet you have there. (215)

Q. How would you find it on here, how could you tell from this document what it was for; how would you tell what is interest and what is for something else?

A. You see I couldn't tell now, but the customer could tell because he has every item that goes in there; this sheet is taken out and sent each month to the customer and the vouchers representing these charges are enclosed with the letter; I could tell what made up these items of deposit because we have the deposit slips in our files, of which the customer has a duplicate.

Q. We can get up a list of the items we want and send it to you a week or ten days in advance; that would be time enough?

A. Yes, sir.

Mr. Adams: (Reading from the book) Under December 30, State 233 under the column "Dates," is, "Stack-Gibbs Lumber Company numbers 5 and 6, \$5,000, \$10,000, 8/8, C. G. Gibbs," I would like to know when those were paid?

A. ————— (The witness does not answer.) We carry a separate account with Mr. Gibbs; I do not see any entry that I have checked up to the 24th of February.

Mr. Adams: Will you look at your general bank balance and see if you didn't include that in your bills receivable after that?

A. Yes, sir, I will.

Q. Then look at C. D. Gibbs' personal account and see if there is any chance you carried it over into it.

A. Yes, sir.

Mr. Adams: I would like to offer at the proper time and if Mr. Coman will please have that portion of the line copied, all the rest blank. (217)



Mr. Coman: All right.

Mr. Post: What is that book?

A. Bills receivable journal.

Q. Of the Exchange National Bank in Spokane?

A. Yes, sir. (218)

The witness excused.

Whereupon an adjournment was taken until January 16th, 1917.

On January 16th, 1917, no proceedings were had in relation to the matter of either the Mechanics Loan & Trust Company or the Exchange National Bank, and a further adjournment was taken until January 19th.

Mr. Post: We desire to file a petition of the Exchange National Bank which has relation to the claim of the Mechanics Loan & Trust Company; that is, this petition sets forth the interest of the Exchange National Bank and it is that the claim of the Mechanics Loan & Trust Company be allowed in the name of the Mechanics Loan & Trust Company. I wish to file this as a petition and also to eliminate any question as to the name of the party who is entitled to have the claim allowed in its name or otherwise. This was objected to by the objecting creditors. The objection to its being filed, however, was overruled and it was permitted to stay on file. Thereafter the following proceedings were had.

E. T. Coman, a witness recalled on behalf of the petitioner, testified as follows:

## TESTIMONY OF E. T. COMAN.

*Direct Examination.*

My Mr. Post:

Since my former testimony and upon returning to Spokane, I got hold of the records of the bank in respect to the two notes, one for \$10,000 and one for \$5,000, that we were discussing and these records I have shown to Mr. Adams, Mr. Canfield and Mr. Danson. I think it was the day after we left here. I have brought all these records up here in respect to those two notes, which I now produce. (266) I am now referring to line 16 on page 233, Bills Receivable J; there appears bills receivable 27,075, representing a loan of \$5,000 in the name of C. D. Gibbs, line 17 is 27,076 and represents a loan of \$10,000 to C. D. Gibbs.

Q. In whose name?

A. C. D. Gibbs, and on 16 appears the endorsement Stack-Gibbs Lumber Company. It also appears on page 261 under date of January 25, 1916, line 25, the following entry representing a payment of notes, C. D. Gibbs, \$5,000 No. 27,075, which is the number of the Bills Receivable, the entry in the margin paid by C. D., No. 82495; on the same date on page 262 on line 2 appears the entry loan paid \$10,000, C. D. Gibbs No. 27076. That is on January 25, 1916, and is before I went to Minneapolis. (267) Now here is the original certificate of deposit No. 82495, it is endorsed on the back, "used to pay B. R. No. 27075 of C. D. Gibbs, January 25, 1916." That certificate of deposit was never delivered to C. D. Gibbs or the Stack-Gibbs Lumber

Company and it was issued December 30, 1915. What the Certificate of Deposit had to do with this note for \$5,000 is this—the note was to have been secured by some sort of acceptance or security from some lumber company in Denver and pending the receipt of that security the cashier's check was issued or the C. D. covered the amount of money and the security never came so the money was never delivered. The C. D. I have referred to was not paid for with some other consideration except this five thousand dollar note.

Q. You were to have security for it issued C. D., waiting for the security, and the security didn't come and you cancelled the note and the C. D.; that is the straight of it, is it?

A. Yes, sir, by closing the entry on the books.

Q. So the Stack-Gibbs Lumber Company never got any credit so far as your books are concerned and never used that Five Thousand Dollar note?

A. Not so far as this \$5,000 is concerned.

The Ten Thousand Dollar note was used as a balance note and it was credited on the books of the bank in Stack-Gibbs Lumber Company account No. 2 of which I have the duplicate sheet showing on December 30, 1915, a credit of \$10,000 and on January 25, 1916, a payment of \$10,000 which also represents a closing entry on the books cancelling the other Ten Thousand Dollar note. I am reading from a duplicate of the ledger sheet—we make two copies, one we furnish to the customer and the other is kept in the bank and the one I am reading from is the one that I have kept in the bank and the other

was sent to the Stack-Gibbs Lumber Company That was what we call the balance account, account No. 2 on the ledger; no checks or drafts could be drawn on that account except countersigned by me; that was for a special purpose. (260)

They never used the money, they had no right to use it and it was never drawn from the bank. As to where the notes are, I made a search in our office for the notes and could not find them, but I found a letter, a copy of a letter saying we had transmitted the notes to the company and this letter, I now produce.

Mr. Post: I would like to offer these letters in evidence but have them read into the record as it is short and much easier to keep them that way.

Mr. Adams: I have no objection.

Mr. Post: I will read them into the record. The first letter is with the heading of the Stack-Gibbs Lumber Company, Gibbs, Idaho, February 12, 1916. Exchange National Bank, Spokane, Washington, Gentlemen: We are enclosing herewith our check No. 2774 for \$153.33 interest for forty days on the 14th on Ten Thousand Dollars and Five Thousand Dollars, demand notes, dated 12/30/15. If this meets with your approval kindly cancel the notes and return same to us. Yours truly, Stack-Gibbs Lumber Company, Cleland.

The other is, February 14, 1916, Stack-Gibbs Lumber Company, Gibbs, Idaho, Gentlemen: I acknowledge receipt of your letter of the 12th enclosing check for \$153.33 interest on demand notes which are cancelled and returned herewith. Yours very

truly, E. T. Coman, President. The only thing else in respect to these two notes that has not been brought out is that it has been the custom of the Stack-Gibbs Lumber Company to give a note or notes which it was not intended to be used by the company, as a balance note so that the account would have a balance in it. It is usual when the bank is making loans to base credits upon the average balance and the business of the customer; with the Stack-Gibbs Lumber Company it was very difficult for them to maintain a balance there was two or three parties drawing on the account and each one would claim that some other member of the firm drew the money therefore the agreement with reference to the balance (271) had not been kept, in order to obviate that we would place the money that was agreed upon that should be kept as an average balance in a separate account and keep it where it couldn't be drawn against; sometimes we had the note of Mr. Gibbs and sometimes one of Mr. Toler-ton and sometimes we had the note of Mr. Cleland. The balance account then was for the purpose of keeping the account of the Stack-Gibbs Lumber Company in good standing on the books of the bank for the purpose of maintaining a substantial balance there.

These two notes, one for Ten Thousand Dollars and one for Five Thousand Dollars were cancelled before I went to Minneapolis to attend the creditors' meeting.

This petition of the Exchange National Bank that



we have been heretofore talking about is signed and sworn to by me as president of the bank.

Mr. Post: I offer in evidence upon this hearing, the petition of the Exchange National Bank which was filed this day marked Petitioner's Exhibit No. 50.

Mr. Adams: I object to it as incompetent and immaterial. They can't make evidence by filing a petition and offering it in evidence.

The Referee: The objection will be overruled.

Mr. Adams: Exception.

Whereupon the petition referred to was admitted in evidence as Petitioner's exhibit No. 50 and admitted.

Q. Now Mr. Coman when you were in Minneapolis when this Trust Deed was in process of preparation, did you have any conversation with any of the people who subsequently signed the Trust Deed as to where the money would come from that might be loaned by the Mechanics Loan & Trust Company (274) to the Stack-Gibbs Lumber Company under the terms of the Trust Deed; that can be answered yes or no?

A. Yes.

Q. With whom did you have a conversation on that subject?

A. Probably six or eight or ten people and the conversation was around the board and all of those present.

Q. And the names you gave us the other day, I think, I am not sure?

A. Yes, sir.

Q. Mr. Aaron and—

A. Mr. Fletcher, Mr. Tomlinson, Mr. Hess, Mr. Carpenter.

Q. Well what if anything did you say to those gentlemen there as to where the money, if this trust deed was signed, where the money would come from that would be advanced by the Mechanics Loan & Trust Company under the terms of the Trust Deed?

Mr. Adams: We want to object. That question came up before and your Honor passed upon it and I assume now they are offering this testimony or attempting to offer it under that clause of the present petition which says that at the instance or the request of the signers of the Trust Deed the Exchange Bank did certain things; we want to object on the ground that it is incompetent and immaterial as it is a contemporaneous oral agreement set out in the petition and it is incompetent and immaterial and no evidence as to the authority of anybody there to make any such statement as is here now attempted to be proved.

Mr. Post: It is of course, what I am offering to show is in no way inconsistent with the Trust Deed; it is simply—and so far as the authority of the gentlemen there is concerned I do not think counsel will seriously argue that objection.

Mr. Adams: I certainly insist and strenuously insist upon every objection which I make.

The Referee: The proceedings are drifting in the direction I anticipated they would drift with reference to the allegations set forth in this petition of the Exchange National Bank as over and against

the terms of the Trust Deed upon which the claim of the Mechanics Loan & Trust Company is based; I am not disposed to permit any oral testimony to vary or attempt to vary the terms of the Trust Agreement, but it must be manifest to counsel that it will be very difficult to discriminate in view of this attempted offer of testimony under the allegations of the petition of the Exchange National Bank.

Mr. Adams: The petition of the Mechanics Loan & Trust Company sets forth their claim; the petition which your Honor overruled the motion to strike sets forth the purpose that there should be no misunderstanding as to who was filing the claim, namely the Mechanics Loan & Trust Company; I am assuming this question shows some interest of the Exchange National Bank in the proceeding.

The Referee: Let me ask this question in order that the Court may understand the situation—does the Trust Deed or the Trust Agreement have any reference whatsoever as to where this money is to come from, the sources of it?

Mr. Adams: It provides the Mechanics Loan & Trust Company can advance, if they desire, up to One Hundred Thousand Dollars, and they have a lien up to what they advance, and they allege they advanced in pursuance of the terms of that contract; they now allege in this amended petition that the Exchange National Bank joined in certain advances by reason of certain oral conversations which took place.

Mr. Post: You misinterpret the petition—not intentionally of course, but you are unable to ap-

preciate it or put language into it that is not intended.

The Referee: I do not wish to intimate that what I have said has any reference to any allegations that may be found in the claim, amended claim or petition of the Mechanics Loan & Trust Company because it would be necessary to determine undoubtedly under the pleadings when this answer is filed who is the real party in interest in this case. The Court might be forced to hold under the evidence that the Exchange National Bank was the real party in interest and that the Mechanics Loan & Trust Company was the agent of that bank in preparation and submission of its proof of claim. It is not clear that this question touches any matters set up in this Trust Agreement I am speaking of here.

Mr. Post: It does not tend to vary it in any way.

The Referee: I ask again whether this particular Trust Deed referred to in the question specifies with reference to the sources of money? (277)

Mr. Adams: Yes, your Honor.

Mr. Post: It does not.

Mr. Adams: I take issue with Mr. Post. The Trust Deed provides that the Mechanics Loan & Trust Company can advance—the word Trustee refers to the Mechanics Loan & Trust Company, “The Trustee shall advance such sum of money as it shall be necessary to—” (Here Mr. Adams read an extract from the petition.)

Mr. Post: I am not trying to prove that somebody else should advance it, but I assume when it says the trustee shall advance such moneys as may

be necessary to meet the payroll, etc., it doesn't mean that the trustee has got to get it out of its own pocket; that is a matter of no concern to the other people; it has a right to borrow it or get it from somebody else if it wants to. I assume if they did get it from somebody else, it couldn't make any difference. I am inclined to agree with something Mr. Adams said today here a little while ago, that it wouldn't make any difference where the trust company got the money if it still had the claim, but the trouble with that is that sometimes he says that and sometimes his associates say something else.

Mr. Adams: (Continuing) The Exchange National Bank have a right to have a claim for any amount they advanced, but having a lien or as a subrogation is an entirely different proposition. (279)

Mr. Post: Then, as I understand the gentleman, the point is this: We have a right to get the money from some other place and therefore would have the right if we got the money from some other place to be a general creditor, but couldn't have a lien or be a preferred creditor unless we got the money out of our own clothes. Of course, that may go some places, but we might as well take these things humorously. This has got to be a comedy. I want just to get all the facts here, if your honor please, and it has got to be passed on not only by your honor but by Judge Dietrich, this whole story. Somebody will take it there, so let us get the facts and whatever happens, if we get them in, we will stand



by. We are not trying to cover up anything, but to get it out of our system and tell the whole story.

The Referee: The Trust Deed appears to place the burden of securing these funds upon the Trustee, the Mechanics Loan & Trust Company; I think I shall sustain the objection at this stage of the proceedings; I take it it will be necessary to go into these matters in connection with the issues raised by the answer to be filed to the petition of the Exchange National Bank, and I shall sustain the objection for the present.

Mr. Post: Exception and in order to make the record, I wish to make an offer of proof. That is that Mr. Coman at this meeting at Minneapolis said to these various gentlemen there that the Mechanics Loan & Trust Company had a small capitalization and very little money on deposit and would be unable to take out of its own vaults and advance One Hundred Thousand Dollars or anywhere near that sum and that the Mechanics Loan & Trust Company would therefore have to get this money from the Exchange National Bank and the Exchange Bank would let the Mechanics have it to loan under this Trust Deed or to advance under this Trust Deed and they said they understood that and that was expected and they could go on and act accordingly. (280)

Mr. Adams: To the offer we object if the Court pleases.

The Referee: Sustained.

Mr. Post: Exception.

## CROSS-EXAMINATION.

By Mr. Adams:

The object of a balance account in a bank—it is usual when a bank makes advances that the loan be based upon the business and the average balance of the customer. The balance account has something to do with the size of the loan the bank grants to the customer. The rule of the eastern banks that I have been dealing with (281) is that the balance should be twenty per cent of the amount of the loan; we are just getting to the point where we are introducing these eastern customs into our banking practice in Spokane and we haven't got up to as high as that percentage. In 1915 there was no fixed rule. Sometimes we ran as high as twenty per cent, sometimes as low as five per cent. (282) In December, 1915, the Stack-Gibbs Lumber Company showed an average balance of \$4,000 and on January 11, 1916, it was \$8,000. The first time I heard of a meeting that was to take place in Minneapolis, was sometime in January. (283)

I discussed it with Mr. Gibbs. I think a man was sent up to Gibbs to look over the plant. I left for Minneapolis the last week in January and just before I left I charged off the Fifteen Thousand Dollars. (284) I do not know why I did not send the notes right back. We charged the whole Fifteen Thousand Dollars off on the 24th or 25th of January and charged the company with interest up to the 12th of February. I told Mr. Gibbs about it. The check that you show me, signed by the Stack-Gibbs Lumber Company by Mr. Gibbs together with

the voucher is the check and voucher and my letter showing the payment of interest up to that date. (285) Apparently Mr. Gibbs did not object to paying me interest after we charged it off and we made no objection to receiving it.

Q. I will show you the first set of notes issued by the Stack-Gibbs Lumber Company which are marked Petitioner's Exhibit No. 32; were those notes with the endorsement without recourse when they came to the Exchange National Bank?

A. Yes, sir.

Q. What did the Exchange National Bank do if anything upon the receipt of the notes at the various times they were received—I do not want to interrogate about each note because I assume the practice was the same in respect to each note; is that right?

A. Yes.

Q. What was the process you put them through at the Exchange Bank?

A. When these notes were brought in by the Mechanics Loan & Trust Company they were credited to the account of the Stack-Gibbs Lumber Company.

Q. That is the actual money was not given to the Mechanics but the actual money was credited direct to the Stack-Gibbs Lumber Company?

A. Well there was no money passed in any case but whether the Mechanics gave a check for some of those notes I could not say.

Q. You didn't give any to the Mechanics did you?

A. No.

Q. You gave a credit in each and every instance

to the Stack-Gibbs Lumber Company, isn't that correct?

A. That is my recollection, there might be a check of the Mechanics given representing the note just as a closing entry on the books.

Q. Don't you recall a meeting in your office where you were kind enough to show Judge Canfield, Mr. Weinstein and myself your record and I think Mr. Post was there and we ran it down to show that the credit went direct to the Stack-Gibbs Lumber Company and the Mechanics didn't have any checks or anything else, they brought the notes in and the credit went direct to the Stack-Gibbs Lumber Company?

A. That question was never asked and I didn't check it up from that angle. (288)

Q. Don't you remember I asked you if the Mechanics had advanced any money at all here and you said no the advancement had been made direct from the Exchange to the Stack-Gibbs?

A. I do not recollect any such conversation taking place.

Q. Can you examine your records this evening and if you have any records showing any credit given on the books of the Mechanics to the Stack-Gibbs Lumber Company will you kindly produce them here?

A. Yes.

Q. I hold in my hand petitioner's exhibit No. 32, then petitioner's exhibit No. 31 were given in renewal where they not Mr. Coman? (289)

A. That was the practice.

I have here the sheets of the bills receivable or copies of them showing how we carried this account on the Exchange National Bank books which I am producing. The first notes under this One Hundred Thousand Dollar loan was February 10, 1916. The record shows the disposition of those original notes, what became of them, whether they were renewed or paid—they were renewed. The record shows what became of the renewal notes, they have been charged off in part, charged to profit and loss.

Q. And they are carried how on the books of the bank—

Mr. Post: The books of the bank are the best evidence.

Mr. Adams: The witness was sworn and the books were requested and they said they would be here.

Mr. Post: What you asked for are here I think, but you are now talking about something which according to my recollection you didn't ask for.

Q. Mr. Coman, will you turn to the record showing what records you have of the present notes?

Mr. Post: Well find out whether the records show they were turned over to the Mechanics Loan & Trust Company.

Mr. Adams: I was going to ask a question and you stopped me, but I think now I will stick to the record.

Mr. Post: Ask it straight out.

The Witness: Part of the notes have been charged off and part of them appear on the books of the bank, (291) under bills receivable.



Q. I show you exhibit No. 31 which you say were received by the Exchange Bank in renewal of claimant's exhibit No. 32; after you received them in renewal did you ever turn them back or deliver them to the Mechanics?

A. Why not during the course of business no.

The Witness: They were delivered to the attorney.

Q. Who?

A. Mr. Russell I think was handling the matter then.

Q. Who delivered them to Mr. Russell?

A. The officers of the bank.

Q. And is Mr. Russell the attorney for the Exchange National Bank?

A. He is sometimes. (292)

Q. That is the firm of Post, Russell, Carey & Higgins, and did you receive anything from Mr. Russell for exhibit No. 31 when you delivered them to him?

A. I was out of the bank, was away on my vacation at the time this occurred, but the custom is to take a receipt from the attorney.

Q. Will you please produce that receipt when you are at the bank?

A. Yes, sir.

Q. Did you receive any money or other consideration from anybody?

A. I should say not.

Mr. Post: Just wait a minute, this is calling for a conclusion.

Q. Did you receive moneys, or properties, or credits or anything of that character; did it receive any-

thing other than the receipt you have just mentioned?

A. It received no money.

Q. Did it receive anything else than the receipt you have just mentioned? (293)

A. No, sir.

Q. Now the bills receivable ledger which you showed, the daily items on there, appears C. D. Gibbs, endorsed Stack-Gibbs Lumber Company, wasn't it the custom of the Exchange Bank with reference to the Stack-Gibbs Lumber Company to have some officer sign that balance account note and it was endorsed then by the Stack-Gibbs Lumber Company and the money credited to the Stack-Gibbs Lumber Company; wasn't that the manner of handling the account?

A. That is a very involved question and I do not know that I get it all.

Q. I do not want any misunderstandings about any questions that I ask. In this particular instance the record shows the maker to be C. D. Gibbs?

A. Yes, sir.

Q. Endorsed Stack-Gibbs Lumber Company?

A. Yes, sir.

Q. Now to whom did the credit go, the money itself?

A. Why \$5,000 of it went on a certificate of deposit that was retained by the bank.

Q. And the Ten Thousand?

A. Why the Ten Thousand went to the credit of this balance account which was called Stack-Gibbs account No. 2.

Q. Now that wasn't the first time that had been done?

A. No, sir.

Q. And it was the custom was it not that some officer of the Stack-Gibbs Lumber Company would sign as maker in that balance account and the Stack-Gibbs Lumber Company would sign as endorser and the credit would go to the (294) Stack-Gibbs Lumber Company, wasn't that the custom followed?

A. If I answer that I will say part was the custom and part was not the custom.

Q. In the balance account?

A. Yes.

Q. What was it—who signed the balance account note before that one?

A. I do not remember whether it was Mr. Cleland or Mr. Tolerton.

Q. Didn't all of us in your bank that evening go over this very document the pages we got there and follow the run of that balance account—I am not asking you anything new?

A. This is all there is to this balance account what I showed you.

Q. That particular item?

A. Yes.

Q. Wasn't there one ahead of that?

A. The balance account before that was apparently all signed by Mr. Tolerton.

Q. And endorsed by the Stack-Gibbs Lumber Company?

A. Yes.

Q. And the credit went to the Stack-Gibbs?

A. No.

Q. Who did the credit go to?

A. That was carried on the books to H. B. Tolerton.

Q. Under special account H. B. Tolerton? (295)

A. Yes, sir.

Q. And the one before that?

A. It was a three thousand dollar Cleland note.

Q. Who was that carried under—who did the credit go to there, Mr. Gibbs, or the Stack-Gibbs Lumber Company, or Mr. Stack or Mr. Cleland?

A. That dates back so far I do not think I have that here,—I find it now,

A. H. F. Cleland.

Q. Who paid the interest on those too?

A. It was in every case paid by the Stack-Gibbs Lumber Company.

Q. And that was the method or how the account was handled just the way you have named here?

A. Yes, sir.

Q. Sometimes it would be one officer and sometimes another officer?

A. Yes, sir.

Mr. Adams: Mr. Coman said he might not wish to come back tomorrow if he couldn't find anything showing any credits between the Mechanics and the Stack-Gibbs Lumber Company—

Mr. Coman: I can answer the question now after having conferred with Mr. Rea—there were no checks passed.

Q. No checks between the Mechanics and the Exchange?

A. No, sir.

Mr. Post: You mean as to this matter?

A. Yes, sir.

Q. No credits there at all?

A. No, sir.

The Referee: By this matter, Mr. Post, you mean—

Mr. Post: This One Hundred Thousand Dollars.

Mr. Adams: Between the Mechanics Loan & Trust Company and the Exchange National Bank.

The Referee: And the Stack-Gibbs Lumber Company.

Mr. Adams: The credit was given direct to the Stack-Gibbs Lumber Company on the books of the bank.

The Referee: You mean the Exchange National Bank?

Mr. Adams: Yes, is that right Mr. Coman?

A. Yes.

Q. The receipt you will send by Mr. Post will you please?

A. Yes, sir.

#### RE-DIRECT EXAMINATION.

By Mr. Post:

The Witness: I do not know whether Mr. Russell gave a receipt or not. I was not here when the notes were delivered, I was in Missouri. I do not know whether the bank got from Mr. Russell any promise or any other thing or from the Mechanics Loan & Trust Company except that they didn't get any money. I am only testifying to the general



practice in such matters. I wasn't in the bank at the time and I don't know whether Mr. Russell on behalf of the Mechanics or Mr. Rea promised if those notes were turned over to the Mechanics that they would file the claim here as a preferred claim against the Stack-Gibbs Lumber Company in the bankruptcy proceedings based on those notes. I do not know what the bank did get from Mr. Russell or the Mechanics when the notes were turned over. In regard to the interest that was charged up to February 12th on the Fifteen Thousand Dollar notes, I do not know why interest was paid up to February 12th except that all we could get out of the Stack-Gibbs Lumber Company was that much clear gain. (298) In regard to the added interest up to February 12th, I had nothing to do with it personally, I suppose it was handled by the note teller. I do not handle those matters myself.

Q. You do not know anything about it personally except that you find that record?

Mr Adams: I beg pardon, his letter is signed by him.

Q. The letter signed by you acknowledging receipt of those are—but why it was charged up to February 12th do you or do you not know?

A. Know why it was charged up? I know of no reason but to get the money.

Q. But your attention was called to this that you cancelled those notes January 25th; why did you charge interest beyond January 25th up to February 12th?

A. I do not know.

Witness states that he doesn't know whether Mr. Russell gave a receipt or not, as he was not in Spokane when the notes were delivered, but was in the State of Missouri, and that he doesn't know whether the bank got from Mr. Russell or the Mechanics Loan & Trust Company any promise or any other thing, except he knows the bank did not get any money; that he doesn't know whether Mr. Russell or the Mechanics Loan & Trust Company promised the bank to file the claim as a preferred claim, as he was not in the bank at the time.

It is admitted by counsel for the trustee and all of the creditors that the Mechanics Loan & Trust Company was qualified to do business in the State of Idaho on the 3rd day of January, 1916, and has been since qualified and has complied with the laws of the State of Idaho relative to foreign corporations doing business in that state.

#### RE-CROSS EXAMINATION.

By Mr. Adams:

The Witness: If the Exchange Bank in the course of business received any moneys or properties or written documents or anything of that character from Mr. Russell, they are in the possession of the bank or some officer of the bank, or some part of the bank's properties, and could be found if we received anything. Whatever was received from Mr. Russell or anyone else for Exhibit No. 31 I will produce in court. (301) In December, 1915, we were carrying accounts, assigned for the Stack-

Gibbs Lumber Company—no, that was January 21st, 1916. That is an odd amount there that I assume was an assigned invoice. It was \$1389. The account didn't amount to much until Mr. Katz came here when we commenced to handle the company's assigned accounts. That was on the 14th day of February.

We frequently threw out the checks of the Stack-Gibbs Lumber Company to prevent their overdraw-ing.

Mr. Adams:

The Witness: Their overdraft would sometimes be a few thousand dollars. (302) I do not believe that it ever went to ten or twelve thousand dollars. On December 21st, it was \$5,804.30 and on December 15th it was \$37,271.05—that is December 15th, 1915.

By Mr. Post:

Q. What was it the next day?

A. The next day there was a balance; evidently a remittance in the mail to cover that. (303)

#### RE-CROSS EXAMINATION.

By Mr. Adams:

Q. You didn't throw all their checks out that day did you?

A. Evidently not; well I am not certain that was overdrawn that day because it appears here—you see they make two entries here, we have two clearings in Spokane a morning and a noon clearing and often times the account will show on the first strike that it is overdrawn but there will be deposits

in the mail or there will be deposits in some other department that will come in and put the balance on the right side before the bank closes; as you see here in a number of cases—now on the first strike on December 13th shows overdrawn \$3116.80 and when they closed that night they showed a balance of \$128.95. On December 15th there was only one strike and that was an overdraft of \$37,000; and on November 30th, we started with an overdraft of \$6238.32; and on December 6th there was an overdraft of \$1136.86. On December 7th, there was four transactions on that one day. Three of them showed, the first three showed overdrafts around Nine Thousand Dollars and ended up with a net balance of \$35.98 but that does not mean anything. (304) It means when they got through at the close of business that day they had a credit balance of \$38.95. On December 9th there was an overdraft of \$2,214.-02, December 11th a net balance of \$33.20.

*Witness Excused.* (305)

Frank T. Post, a witness produced on behalf of the petitioner, after being duly sworn, testified as follows:

#### EXAMINED BY HIMSELF.

The Witness:

My name is Frank T. Post and I am a member of the firm of Post, Russell, Carey & Higgins of Spokane. The minutes of the stockholders' meeting held on the 18th day of February, 1916, of the Stack-Gibbs Lumber Company were drawn by myself. I attended that meeting and that meeting was held on

February 18, 1916, just as is set forth in the minutes I drew. The same is true as to the meeting of the stockholders of the Dryad Lumber Company which minutes are already in evidence.

Either at that meeting or before that meeting, I cannot say which, I had a conversation with Mr. Katz in which I spoke to Mr. Katz about the fact that he was there representing—as the representative of the Mechanics Loan & Trust Company as Trustee and that responsibility was upon him of running that business. What his answer was in relation to it I can't say absolutely except that he heard what I said and acquiesced in it. That is all.

#### CROSS-EXAMINATION.

By Mr. Canfield:

The Witness: The conversation that I had with Mr. Katz was at the meeting of February 18th or before that according to my best recollection. (306) But I have no recollection where the conversation occurred nor who was present but my recollection is that it was at this meeting, that is what I think about it but of course I am not sure. There were not many there but I wouldn't say there was anybody present; I do not think there was anybody present, that is I think I didn't have this conversation in the presence of Mr. Gibbs. Mr. Cleland was in the building at the time we held this meeting, but my idea of it is, my recollection is that my conversation with Mr. Katz was not in the presence of either Mr. Cleland or Mr. Gibbs. The minutes were originally written in my office in Spokane before I went to Gibbs



but there were some changes made at Gibbs in the minutes or at least at one of these meetings; my recollection is those changes are interlineations in my handwriting; I do not think—I wouldn't say positively without seeing the minutes themselves whether (307) any part of it was typewritten there at Gibbs. I do not remember whether I went to Gibbs alone or not. We had a formal meeting and the minutes were read. Whoever these minutes say were present were present I think, with one exception—I think that is not correct—the Stockholders meeting of the Stack-Gibbs Lumber Company says—this is the stockholders meeting—Present C. D. Gibbs, Tolerton—as a matter of fact there was present, Gibbs, Cleland, Katz and myself. Mr. Tolerton was not present but his signature was obtained to the minutes I think the same day or the next day and the reason I think that is because of the conversation I then had—he was to be there, he was notified to be there and expected there but they figured out he was drunk and didn't get there which was his unfortunate position once in a while—and they were going to get him to sign these minutes and then within a very few days I got a certified copy of the minutes with his name signed to them, the same being certified by Mr. Katz. Mr. Cleland was there at the meeting of the stockholders (308) of the Stack-Gibbs Lumber Company. I have reference then to the time I had this conversation with Mr. Katz, that Mr. Cleland was there in the building but I do not think he was there — present when I was

talking to Mr. Katz about this matter because I didn't intend to discuss matters with Mr. Katz in the presence of Mr. Gibbs or Mr. Cleland; I was impressing upon him that the responsibility was upon him, that that was what he was there for. We held a Board meeting as well as a stockholders meeting and the minutes were prepared by me in the same way. The typewritten document that I prepared before I went down there was used unless there were some changes made which I could tell if the minutes were here. If any changes were made they would be in my handwriting upon the minute book. I cannot say whether the conversation with Mr. Katz occurred before or after the meeting. (309) I remember who was there during the time I was there but I can't remember whether it was on this occasion or another occasion that I waited for a long time for a train to come along; I know I was there quite a while on one occasion and whether this one or not I am not sure; I went on one occasion with Mr. Katz around through the mill after we had fussed around and according to my recollection I know I did with somebody and I think it was with Mr. Katz—I might be mistaken about that as to whether I went through the mill with Mr. Katz but I remember going through it. At the Board meeting all the trustees were at the meeting, Mr. Gibbs, Mr. Cleland, Mr. Katz and I were there, and at the Dryad meeting there was Mr. Nelson, Mr. Cleland and Mr. Katz, the trustees of that.

*Witness Excused.* (310)

J. V. Rea, a witness called on behalf of the peti-

tioner, after first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Post:

The Witness: My name is J. V. Rea. I am Secretary and Manager of the Mechanics Loan & Trust Company and have held that position for four or five years. A part of the business of the Mechanics Loan & Trust Company is to act as trustee under various mortgages, deeds of trust, etc. They also loan money and take real estate mortgages as a part of their business. We kept a record of the notes that were given by the Stack-Gibbs Lumber Company and in a book that I have in my hand these records are kept. (311) The cashier kept the record. His name is William H. Kaye and these entries are in his handwriting. This record was made up at the time the notes were issued, presented to us and we made the notation and then took them down to the bank. When the notes came, they were entered in our book and then they were taken down to the bank, I mean the Exchange National Bank of Spokane. Our office is in the Exchange National Bank Building. The entries were made as the renewals came also on this book here and the renewals would come to the Mechanics Loan & Trust Company and then the renewals would be taken down to the bank. (312)

CROSS-EXAMINATION.

By Mr. Adams:

The Witness: Referring to the book, this is the

first page; I think they start here and then it turns back you see, this is really the start. There is no special reason why these pages are pasted together except perhaps that we had some other business in there that was dead—that was killed. These entries were made at the time the notes came in. The first column is not necessarily the date of the instrument but it is supposed to be. The notes are supposed to be entered according to the dates that they come in, that is practically all of them and this entry is made from the notes themselves. (313) There is no reason why we did not put the correct date in there unless it was a mistake, unless it was copied wrong off the note, but that was the intention to put the date of the note. Commencing all over again; the date here is supposed to be the date of the instrument, the next is the name of the maker and the next is, according to the book here, to whom it is payable, but that wasn't the fact. This book is not a true statement of the instrument according to that one feature. I personally knew about the transaction. When a note came in, for instance February 9th, 1916, the date of the instrument, I am assuming it came in sometime about February 9—10th or 11th—in there some place—it was brought to the Mechanics. I do not think the Mechanics gave anything to the Stack-Gibbs for the very first note. They took the note with the endorsement which appears upon it in the record among the notes in Exhibit No. 32 and took it to the Exchange National Bank. (314) The Ex-

change National Bank did not give anything to the Mechanics but gave the credit direct to the Stack-Gibbs Lumber Company. It was not carried then as the Exchange National Bank owner, but the entry was made before it was taken down to the Exchange National Bank. I do not know why they entered here, the Exchange National Bank. That is the only explanation I have is that it is a mistake, that is all. I didn't put it on, I instructed the cashier to take the notes or the note the same as they did all the others. Those items that you are pointing to are in all probability, the original notes. The renewals are in here some place. (315) —That is the old note and that is the original note and here is the renewal note. We have struck out the date and entered the date, that would be the date of the renewal note at the time it was due.

Mr. Adams: We desire to offer this book in evidence with leave to substitute a copy or such portions as we may desire.

The Referee: It will be admitted. (316) The same was marked Exhibit 51.

The Witness: There is a reason why this was entered on the last two pages of the book because it is used for other transactions of the company, other notes. It is our habit to borrow money from the bank from time to time. There are eight pages in the front of this book that are devoted to other business and there is,—I would say fifty pages in all. I do not know why these pages are pasted together. I can see that there is some writing on



them. (317) I do not know whether there is anything between the pasted pages referring to this transaction.

The witness was excused and whereupon an adjournment was taken until February 20th, 1917. (218)

William H. Kaye, a witness called on behalf of the petitioner, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Post:

The Witness: I am the Assistant Secretary of the Mechanics Loan & Trust Company and have held that position for a little more than four years. With reference to Exhibit No. 51 or certain pages of that book, that is in my own handwriting and I made those entries on or about the date set out here. By on or about, I mean on that same day or the day succeeding. The same is true with reference to the other notes, it was either on the day of the note or the day succeeding. (319) The first page that I made the entry on is the page containing the note dated February 9th, 1916. That is the page that is marked as an exhibit here and the word Stack-Gibbs appears at the top. Now with reference to the two pages stuck together, after this page had been completed, I found that it was the last page of the book and the succeeding notes had to be entered on the page preceding; well now there was a note dated April 8th and through some omission it was not entered upon this book and the note

came due in July and the July note was entered and later I found the July note was a renewal of the April note and was not a new indebtedness; in order to make the statement complete I started a new page setting forth the April 8th note in its proper order and did not show the July note because it was a renewal of the April note and in order to rewrite the notes as they came due I simply crossed out the due date of the original note and set opposite the due date of the renewal note. Now on the April note it came due on July 7th and that is the note that appears on the last line of the page that is pasted; the reason for pasting the page was this; I was afraid that anybody looking over this notebook in my absence and having this intervening page might miss the succeeding notes on this page. They had to go backwards instead of forwards, (320) which was unusual of course and in order to obviate that possibility I simply pasted those two pages together so that the succeeding notes would appear immediately succeeding the first notes. On the first page commencing February 9th, 1916, there are eighteen notes on that page and after I had entered those eighteen notes I had to turn backwards because that was the last page; and on the pages that are pasted, I had already some notes. On that page, I had entered the first note May 11th and there are five entries on the page. The first note dated April 8th was omitted on this page but the other four entries are identical. (321) Now in regard to my no-

tation here that reads Stack-Gibbs Lumber Company in favor of the Exchange National Bank under loan, etc., I had no instructions from anybody as to how to make those entries. That was simply an office notation to show the disposition of the notes, what we had done with them; that "in favor of" should be stricken and the words "delivered to" inserted, simply to show the disposition of the notes in case we were called upon to show what we had done with it.

Mr. Post (to the attorneys): Gentlemen, if you want to separate them, you have that privilege, so far as we are concerned, we would be pleased to have you.

#### CROSS-EXAMINATION.

By Mr. Adams:

The Witness:

This book is the bills payable book. We do not keep more than one book of that character in the Mechanics Loan & Trust Company, (322) and this is the record of all the notes payable in the Mechanics and an examination of the book will show all of the notes payable the Mechanics had issued. The reason that I did not keep the book right along in the regular course was that we wished to keep these notes separately so that we could at any time refer to the whole account and have it all together. This is the only account we had along that line although we had other notes payable to us. The other notes, we separated them in order as to date. They came right along in order of date,

the same as an ordinary bills payable book except these particular items and these were in the back of the book. (323) I did not discover that I was working on the last page until I had the page filled. No one told me to put it in the back of the book, I just did it myself. There is no reason why I should keep these notes separate from the bills payable except that I wanted to keep them together. We were to keep it up to One Hundred Thousand Dollars, that was my understanding, and it was easy to refer to it at all times to see the amount that had been used. The fact that the Mechanics was an endorser and might be liable on the notes did not make any difference where I might put it. (324) My recollection is that I saw the first notes when they came into the Mechanics and that I made the entries from them. I think I recollect the first note Petitioner's Exhibit No. 32, dated February 9th, 1916, and as far as I remember it had the endorsement on the back of it, "pay to the order of blank without recourse, Mechanics Loan & Trust Company, by J. V. Rea, Secretary." I believe that I got that note from Mr. Rea and endorsed it in this book and then delivered it back to Mr. Rea. All I had to do with it was entering it into the book. (325) Some of these notes were endorsed by myself as Assistant Secretary and those I got from the Stack-Gibbs Lumber Company by mail. After I would get them I would take them down to the Exchange National Bank and I would leave them with the note teller, most of the time with Mr.

Lewer. As far as I was concerned then the transaction was complete.

Q. You stated you took them to the note teller's window of the Exchange National Bank and left them there; did you receive anything from the Exchange National Bank either for yourself or for any other party whomsoever for the note or notes which you left there?

A. I received nothing in writing.

The Witness: As to the renewal notes, Petitioner's Exhibit No. 31, some of them I received from Mr. Rea and some by mail from the Stack-Gibbs Lumber Company. (327) I made notations of these renewal notes in the due dates in our book. Mr. Rea gave them to me and I returned them to him. If I got them by mail I would deliver them to the Exchange National Bank as I did the original notes. The same kind of a transaction was had except with the renewal notes I would receive back the original note that the subsequent note was a renewal of.

Q. We will pick out one set so that we may have it as an example; take one of the original notes and one of the renewals—one of the renewal notes that renewed one of the original notes.

A. That would be a renewal of one of the February notes.

Q. Pick out the February note please?

(Witness hands counsel note dated February 9, 1916, Petitioner's Exhibit No. 32, \$5,000 and note for \$5,000 dated May 9, 1916, Petitioner's Exhibit



No. 31, the numbers on the notes in red ink, number of the first note is No. 27730 and the number of the second note is No. 29800.)

Q. Upon your taking note No. 28900 to the Exchange National Bank of Spokane, delivering it to the note teller's window, you received note No. 27730?

A. That presumably; of course these are picked out promiscuously and I do not know whether that is an original renewal of that note because there are eight notes of that same day. (328)

Q. Presuming that is, that would be the method you followed?

A. Yes, sir.

Q. Was the note stamped paid by the Exchange National Bank when you received it?

A. Yes.

Q. I assume the signature hadn't been torn out of it?

A. No, that was done later.

Q. That was the method followed with respect to the renewals?

A. Yes, sir.

Q. Now I want to show you note numbered 29733; can you tell the Court when you first saw that note?

A. I cannot determine that, presumably on that date.

Q. Do you know where you got the note from?

A. I got this note from Mr. Rea as I remember it.

Q. Are you sure about that?

A. No sir, I am not, but that is the only method I would have of receiving it.

Q. That is the best recollection you have, you got it from Mr. Rea?

A. Yes sir, for entry.

Q. Do you know what you did with it?

A. I entered it on the record. (329)

Q. Would that be true also of note No. 29734?

A. Yes.

Q. Now, Mr. Kaye, is there any reason why there should be any change in your record as to those two notes as to whose favor they are?

A. It is my recollection that these two notes were negotiated direct by Mr. Katz with the Exchange National Bank on one of his visits to Spokane.

Q. Now Mr. Kaye, so that Mr. Post's statement may not go unchallenged—is it true all of the rest of the notes are to the Mechanics Loan & Trust Company (handing witness a bunch of notes), isn't there four more you have in your hand now to the Exchange National Bank?

A. All these are renewal notes.

Q. I am not asking you what they are, I am asking you if they are not payable to the Exchange National Bank and if you did not enter them on the book you have in your hand there?

A. Yes sir I did.

Q. Now is there any explanation why there should be any change in your record in respect to those four notes?

A. I might add that these notes are renewal notes and the Exchange Bank having in its possession the

original notes presumably these notes were made directly to the bank to pay them, or to take up the original notes; that is my own surmise, I do not know that that is a fact.

Q. Have you any other record, the Mechanics, respecting these notes, than what you have on your knee there?

A. No, sir. (331)

The Witness: I think that I re-wrote the preceding page from the last one here about in July, 1916, about July 7th. There appear here five entries. I tried to explain to you that the July item was the renewal of the note made in April. The April item was omitted for some reason or other, it was not entered on this sheet that was pasted (332) and when the July item came up I found that no note had been entered for April of which the July note was the renewal, so I started this sheet in July, putting the April note first so that the notes would be in their regular order. The corrected sheet, Exhibit No. 51 and I didn't enter the July note because it appears here. Under July, that (indicating) that is the July note. That is a renewal of the April note, July 7th.

Mr. Post: With the red line across it, that means renewal?

A. Yes, sir; that was extended again until October 5th; that same thing happens down here.

Mr. Post: The same thing occurs on the other page, does it?

A. Yes, it does.

Mr. Post: The record may show that these pages are in evidence.

There was no objection and they were admitted as petitioner's exhibit No. 51. (333)

The Referee: If a full, true and correct copy of such pages as have been identified and admitted were filed and a photographic copy made, I think that should be amply sufficient; I will let the matter so far as the delivery of the book over to the court is concerned stand with the observation submitted; I will hear you further in the event you think it would be absolutely necessary to have the original in court; as far as I am able to see I hardly think it necessary at the present time. (334)

Mr. Adams: I would like to ask him a couple of questions. I want again to show you the yellow note No. 29733 and No. 29734; is there any way of telling whether those are the last two notes or not?

A. Yes, sir, these are the last two notes.

The Witness: I can tell by the fact that they are on demand; (335) that capital "D" means demand.

I haven't the least idea at all; whether the endorsement was on the back of the note at the time I entered them in the book. There was no particular reason why I should pay any attention to that when entering them and I did not and I can't tell you whether it was on there or not. As to when I entered them on the book, presumably it was on the day they were made out, but then there is no reason I can tell you exactly the day because there is no particular — I mean no particular attention

was paid to them, except my usual custom to enter the notes the day that they were made. (336) My impression is that I was in Alaska at the time of the bankruptcy proceedings were brought and it is my impression I went about the middle of July and returned about the beginning of August. I did not enter these notes after I returned from Alaska, I am positive of that. To my knowledge, no entries pertaining to this record were made in this book after July 11th. (337)

RE-DIRECT EXAMINATION.

By Mr. Post:

Q. You have been asked about four notes by counsel dated May 16th, 1916, that you say are renewals that are under the Exchange National Bank and you said that you entered them in your book; now in what form did you enter those in your book?

A. Simply to place the due date of the renewal note after the entry.

Q. Will you show that to the Court here; did you or did you not write in your book in making the entry, the words Stack-Gibbs Lumber Company, the words Exchange National Bank the word loan, etc.?

A. All of this.

Q. Now as to these four notes did you write when you entered these four notes did you write all this anew in your book, Stack-Gibbs Lumber Company?

A. No sir.

Q. The words "Exchange National Bank"?



A. No sir

Q. What did you put in your book, show the Court, what word and say it loud enough so that the stenographer will get it?

A. These notes are renewals of notes—

The Witness: Now these four notes are the renewals of the notes dated February 16th. (338) The originals of which these notes are the renewals were dated February 16th, and they were due on May the 16th; on May 16th these notes were sent to us by the Stack-Gibbs Lumber Company and all I did was simply to enter in this record the due date of the renewal notes which was August 14th; I simply crossed off the 16 and put the 14 under this August column showing the due date of the renewal note; that is the only entry that was made pertaining to those renewal notes that appear on Exhibit No. 51. With red ink I crossed off the figure 16 under May and under August I put the figure 14 which denoted the due date of the renewal note.

Q. (Mr. Post) (to Mr. Kaye): I have offered these gentlemen the opportunity of opening these up, you can get hold of some steam here and open these pages up?

A. I will try, yes.

Counsel for the objectors stated that they had filed answers to the petition of the Exchange National Bank. Counsel for all parties stipulated that the petitions of the trust company and the bank and the proceedings thereon might be consolidated.

The Referee: The record may show that the

amended claim of the Mechanics Loan & Trust Company and the petition of the Exchange National Bank being consolidated are to be tried together and considered together as one proceeding.

E. T. Coman, being recalled as a witness for and on behalf of the petitioner, the Mechanics Loan & Trust Company and the Exchange National Bank, testified as follows:

DIRECT EXAMINATION.

By Mr. Post:

Q. Now, Mr. Coman, you have heretofore testified that you were in Minneapolis at the time the Trust Deed was prepared, that you had a conversation in relation with it with the other creditors on the subject as to whether the Mechanics would borrow the money or get the money from the Exchange National Bank or not which it advanced under the Trust Deed; I wish to ask you what that conversation was?

Mr. Adams: We want to renew our objection, incompetent and immaterial and cannot change the written contract by contemporaneous oral agreement or any conversation with respect thereto. (349) And I want to add the further objection, if I may, I want to further object on the ground that the testimony will tend to change and alter the contract as represented by the notes, Exhibits No. 31 and No. 32 and is therefore incompetent and immaterial. You cannot change the contract as represented by negotiable instruments by oral testimony.

The Referee: The objection is overruled.

Mr. Adams: Exception to all the rulings.

Mr. Adams: I want to make another objection for the record and that is that there is no authority shown as far as the parties who have answered the petition here are concerned to make any other or different contract or enter into any other or different arrangement than that set forth in the writing, Exhibit A attached to the petition of the Exchange National Bank, and any conversation tending to alter, change or make any different or other arrangement or understanding is improper unless there is some authority shown to bind the other parties to the alleged conversation.

The Referee: That objection in my opinion is more nearly vital than the others, but I shall overrule it for the purpose of the record, reserving as in the first instance the privilege to counsel to move that this testimony be stricken and the Court's reserving to itself the right to consider all this testimony together and to give it such legal weight as it may deem proper.

Mr. Adams: We would like to have our proper exceptions shown.

The Referee: Let the record show the exceptions.

The Witness: Yes, sir.

Q. The question was—relate the conversation.

A. Why, most of the conversation on that point was by Mr. Fletcher; he wanted to know—

Q. Who is Mr. Fletcher?

A. He is the vice-president for the Fort Dearborn National Bank; he wanted to know what the respon-

sibility of this trustee was and I stated that while the capital was only \$10,000 that through an arrangement with the bank it could get the money to carry out the terms of this contract.

Q. By the bank?

A. The Exchange National Bank, then Mr. Fletcher made the objection to the rate of interest charged. We had charged the Stack-Gibbs eight per cent and I believe I offered to (350) make the rate seven per cent, and there was quite a little argument back and forth—I do not attempt to state all of it—but Mr. Fletcher represented that this would be such a gilt-edged loan with all—

Mr. Adams: I object to that; let the witness state what Mr. Fletcher said.

Q. Yes, what he said?

A. He said that this would be a secured loan and therefore shouldn't come under the same class as our previous loans to the Stack-Gibbs, the other creditors were waiving their rights to these assets and there was ample property there to repay it and therefore we ought to reduce the rate and I finally agreed to come down to six per cent.

There was another matter which I omitted which was discussed at the same time and that was the amount to be advanced; it was originally contemplated that the amount should be Fifty Thousand Dollars and my recollection if it serves me right is that we first—no, for the first day in our negotiations fifty thousand dollars was discussed but after we got through Mr. Fletcher suggested before the

contract was finally drawn up the amount was raised to One Hundred Thousand Dollars, he making the statement that he had had experience in a great many of these transactions and if we made the amount fifty thousand dollars and it was found that one hundred thousand dollars was necessary then it would require another meeting of all the parties to the agreement, but that by reason of putting the amount in at one hundred thousand dollars it wouldn't involve the advancing of it if it wasn't found necessary.

Mr. Adams: I am assuming that this is all going in under our objection, if the Court please.

Mr. Post: Yes, that is right.

The Referee: Yes.

Mr. Adams: Then I will wait until it is all finished and then I will make my motion.

Mr. Post: This conversation you had you have related you referred to Mr. Fletcher doing the talking; did any of the other creditors do any talking about these things?

A. Why, yes, as in any conference where there were eight or ten men participating one would have something to say and another would have another remark to make, but the conversation with reference to the amount of the advance the rate of interest and the responsibility of the trust company, those inquiries were put to us for the most part by Mr. Fletcher.

Q. The other creditors whom you have heretofore named were they all there at the time?



A. Yes, sir.

Q. So far as you now recollect you have related all of the conversation that pertained to the particular subject of how the Mechanics should get the money; you remember any other conversation relating to that subject?

A. Well, no; well, these negotiations, you must understand, extended over a period of a couple of days and many hours of conversation on all subjects pertaining to the Stack-Gibbs affairs and what I have stated here didn't take two days to tell that.

Q. No, nor was it all said at one time—you do not know which day it was said or whether part was said one day and part another? (360)

A. It was probably said at different times on the days that the conference took place, but the most—I remember particularly this increase of fifty thousand to one hundred thousand was the windup and I remember Mr. Fletcher making the statement of his experience in similar transactions and Mr. Carpenter also said that he thought if Mr. Gibbs was properly financed he could go ahead and work his way out, that he knew from experience he had never been in a position where he could operate independently.

The Referee: You are testifying then as to the gist of the conversation that was held at this conference to which you have testified in connection with the Stack-Gibbs affairs?

Witness: Yes, sir.

Mr. Post: That is all.

Mr. Adams: May it please the Court, I want to

make a motion first to strike the testimony with reference to the amount being inserted in the contract one hundred thousand dollars instead of fifty thousand as that is explaining and giving conversation relative to a particular matter set forth in the contract and based upon all the objections which are heretofore made; I further wish to move to strike out the testimony with respect to the Exchange National Bank on the same ground that we made objection to the question and I further wish to add to the motion to strike the further objection that it does not appear by the testimony of the witness that all of the signers of Exhibit A were present at that meeting or were represented and therefore that it was not a contract or understanding with respect to all of the signers of the agreement and therefore it is immaterial and incompetent; and also with respect to the testimony about the rate of interest, that is also a matter that is specifically covered by the contract and the evidence with respect thereto is incompetent and immaterial; we are basing our motion upon all the objections which were made originally to the admissions of the answers.

Mr. Post: The matter about the rate of interest does not contradict in any way and I do not know as it is very material except as showing the interest they had in it and their feeling with respect to the value of the security on the part of the creditors; it does not, however, in any way tend to contradict the contract, for the contract says six per cent and that is what they agreed upon. The matter of chang-

ing the fifty thousand to one hundred thousand dollars, that is the part of the conversation that relates to it; it is not a matter in itself, at the most, of any vital importance, but it is a part of the conversation in relation to how the money was to be advanced and who should advance it and how it was got.

The Witness: May I see the contract, please?

Mr. Post: You want one of the originals?

A. Yes.

Mr. Post: Here is one of the originals.

The Referee: I shall sustain objection of counsel insofar as the answers relating to the one hundred thousand as agreed upon in this conference—I will sustain the objection of counsel insofar as it relates to amount of money they actually agreed upon as disclosed by the agreement in the contract, also with reference to the rate of interest inasmuch as the reference to those two items in the testimony tends to vary the terms of the written contract; as to the other objections of counsel they may be overruled. As I said a moment ago in consideration of this evidence counsel will remember it is very difficult to rule properly and correctly on each phase of a matter of this nature and I shall consider this evidence in the light of whatever legal significance the Court thinks it is entitled to considering the whole of the evidence.

Mr. Canfield: Save exception to that portion of the order which denies the motion to strike.

Mr. Adams: Counsel now moves to strike balance of the testimony.

Mr. Post: I take exception to that part of it in which the Court sustains the objection.

Mr. Adams: For record purposes I move to strike the balance of the testimony that has not been stricken out upon the grounds heretofore stated, which I assume your Honor will overrule, and I should like to reserve exception.

The Referee: The motion is denied.

Mr. Adams: Exception.

Mr. Post: State whether or not Mr. Coman, the Exchange National Bank loaned such money as it did loan, referred to by the notes in evidence, in reliance upon the arrangements that were made in Minneapolis?

Mr. Adams: I object to that as incompetent and immaterial, leading and suggestive and an attempt to vary the (358) terms of the written contract as set forth in Exhibit A and Exhibits 31 and 32 and calls for the conclusion of the witness.

The Referee: Overruled.

Mr. Adams: Exception.

A. Yes.

Mr. Adams: I now move to strike that answer from the record upon the same ground as we made objection to the question.

The Referee: Overruled.

Mr. Adams: Exception.

The Referee: I think that is largely for the purpose of completing the record in regard to this series of objections?

Mr. Adams: Yes, sir.

## CROSS-EXAMINATION

By Mr. Adams:

Q. Who was present at the conversation or conversations which you related as taking place at the meeting in Minneapolis?

A. There was—

Q. I want the names of the individuals?

A. H. J. Aaron, John Fletcher, I. F. Searle, E. L. Carpenter, S. H. Hess, C. D. Gibbs, Mr. Tomlinson—I do not remember his initials—Mr. Carpenter's associate in the Shevlin Trustee, I think his name was Howard, they always referred to him as Bob—Wetmore, that is his name; Hovey Clark was in a part of the time, myself—well, there were stenographers, clerks and attorneys that would come and go from time to time during the conference.

Q. That is all.

Witness excused.

Mr. Post: That is all of our testimony.

Siegmund Katz, a witness produced on behalf of the respondent to the petition of the Exchange National Bank and the petition of the Mechanics Loan & Trust Company, and being first duly sworn, testified as follows:

## DIRECT EXAMINATION

By Mr. Adams:

Mr. Adams: On behalf of the respondent to both petitions, if it please your Honor, we wish to offer the check and voucher and the letter showing the payment of \$153.33 of interest, and ask that it be marked Respondent's Exhibit No. 1, the same



being a letter dated February 12th, 1916, from Stack-Gibbs Lumber Company to Exchange National Bank, enclosing check for \$153.33 interest for 40 days to the 14th on \$10,000 and \$5,000 demand notes dated 12-30-15, together with a check for \$153.33 payable to Exchange National Bank, signed Stack-Gibbs Lumber Company, dated February 12, 1916, and voucher covering same.

Whereupon, the three documents referred to were marked Respondent's Exhibit No. 1 and admitted.

The Witness: The document that you hold, dated December 31, 1915, is a charge for revenue stamps on two demand notes of ten thousand and five thousand dollars.

Mr. Adams: We offer in evidence this yellow slip marked Respondents' Exhibit No. 2, the same being a memorandum charge slip for revenue stamps on the \$10,000 and \$5,000 notes, dated December 31, 1915.

The Referee: It will be admitted.

Whereupon, the exhibit referred to was admitted in evidence and marked Respondents' Exhibit No. 2. (368)

The Witness: Referring to the two notes being part of Petitioner's Exhibit No. 31, being Number 29,733 and 29,734, I have seen those notes before (369) and I had a conversation with Mr. Green of the Exchange National Bank with reference to those notes in the beginning of August, 1916, at the Exchange National Bank in Spokane. Mr. Green's initials are O. M. Green, and he is vice-president of the Exchange National Bank of Spokane. I called

his attention—I told him that of the One Hundred Thousand Dollars that was in controversy Five Thousand Dollars, those two identical notes, were made out in the name of the Exchange National Bank. (370)

The Referee: To what notes do you refer?

The Witness: The two notes I have in my hand here, note 7494 and 7495—that is the number of the Stack-Gibbs—Exhibit No. 31 and the one that is printed on here of the bank's number is 29,734 and 29,733—that they were made out in the name of the Exchange National Bank and Mr. Green said that it was all right, he was going to have them endorsed. (370)

Q. Now, Mr. Katz, have you made an examination of the books and records of the Stack-Gibbs Lumber Company so that you are able to state what the total amount of the indebtedness of the company was on the first day of February, 1916?

A. Yes, sir, I have made that.

Q. What was the total amount of the indebtedness of the Stack-Gibbs Lumber Company on February 1, 1916?

Mr. Post: I object to that, first, as incompetent and immaterial, and second, it is not the best evidence. I assume that the purpose of this testimony is to get at the fact whether or not ninety per cent. of the creditors signed this trust deed.

Mr. Adams: Yes, to show who actually signed it, and then it is a matter of computation. You haven't offered any evidence upon it and we thought we would.

Mr. Post: I have offered some evidence on it. I assume that it is clear that it was not the intention of the signers of the trust deed, the creditors in Minneapolis, that the trustee or anybody else representing the trustee should spend a week or a month going over the books of the Stack-Gibbs Lumber Company or in any other manner trying to find out what the debts were. It happens that it was an emergency meeting, as shown by the telegrams to Mr. Aaron and Mr. Stack and other correspondence; that this loan should be made as speedily as possible because of the situation of the company. Mr. Co-man has testified that at this Minneapolis meeting there was presented a statement from Mr. Gibbs as to the amount of his debts, and the creditors agreed that when Mrs. Tolerton signed, this ninety per cent. would have signed, and before this particular trust deed came back here and was actually executed by the Stack-Gibbs Lumber Company, money was advanced pursuant to the telegraphic correspondence with Mr. Aaron, at least. It doesn't make any difference, as a matter of fact, how much the debts were. The only material thing is whether or not these particular creditors assumed the debts to be a certain amount, agreed as far as they were concerned the debts were a certain amount, and ninety per cent. of that amount was actually signed. So far as the Stack-Gibbs Lumber Company is concerned, it can't raise any question whether ninety per cent. signed or not; neither can the trustee, because that company got the money; that company signed the

trust deed, executed its notes and got the money. It does not appear from the record in this case that Mr. Gibbs was not the kind of a man Mr. Fletcher, Mr. Aaron, Mr. Shevelin, Mr. Carpenter and Mr. Coman thought he was. It does appear that the assets did not exceed the liabilities by a million dollars, and that this wasn't the gilt-edged six per cent. loan as Mr. Fletcher thought it would be. It is quite probable that a lot of the Stack-Gibbs debts do not appear on their books, but they were not proceeding on that theory in Minneapolis so far as this trust deed is concerned.

The Witness: (Continued).

At the former hearing, I was asked to make up certain lists of creditors of the Stack-Gibbs Lumber Company and I have made it and have it here, which I will now produce. (373) I made an examination of the books and records for the purpose of ascertaining what the liabilities of the Stack-Gibbs Lumber Company were February 1st, 1916. I went over all the books that were necessary to be examined. I took the customers' ledger, the log ledger and what we call the general ledger, the operating ledger, there are three ledgers; then in support of this I examined occasionally the supporting evidence which is the vouchers, cash register and check register, and I made a trial balance and from this trial balance I made out this report. I made them separately first, not looking at the old trial balance, in fact I didn't know that there was one until I found it; then I compared it and found it to be correct. In other words,

the books in themselves (374) were correct. The document that I am handing you is the result of the labor that I have just enumerated. On the first page recapitulation of assets and liabilities, that is a recapitulation of the entire document which you have in your hand. I have mentioned each liability separately, the name and the amount.

Whereupon an adjournment was taken to 1:30 o'clock p. m.

At 1:30 o'clock p. m., Mr. William H. Kaye was recalled on behalf of the petitioner, testified as follows:

DIRECT EXAMINATION.

By Mr. Post:

I went with Judge Canfield to give the photographer those pages of this book that are marked Exhibit No. 51 to be photographed and the photographer and I unsealed those sheets that were mucilaged together, and they are here.

Mr. Post: I wish to offer them in evidence so we will have it all here, mark Petitioner's Exhibit 51-A: I would like to have the stenographer make a copy of it and let the copy go in the record.

The Referee: Yes, a copy may be substituted; is there any objection to the offer?

Mr. Adams: No.

Pages referred to marked Plaintiff's Exhibit 51A, admitted.

Witness excused.

Siegmund Katz, recalled for further direct examination, testified as follows:



## DIRECT EXAMINATION.

By Mr. Adams:

The Witness: The books and records from which I made up this statement are all here, I am pretty sure; I tried to bring them all here. This document is a comparison of liabilities and assets of the Stack-Gibbs Lumber Company, February 1st, 1916, which is the date of the meeting in Minneapolis, and July 29, 1916, the date upon which the bankruptcy proceedings were filed—petition filed: (377) They are comparative statements and the books and records as I have said, from which I compiled the entire statement, are here. I might say that July 29th, 1916, statement I took as a reference for those, the schedule which is a true copy, the bankruptcy schedule. Those are filed in this court. We have the books and records of the court, we have the complete list of items from which I got the knowledge which is spread upon those pages. They are right here.

Mr. Adams: We offer that document.

Mr. Post: I object to that in addition to the objection I made about the other, because this contains some matters not pertinent in any way to the issue. He started in with the witness to prove the liabilities of the company as of February 1st, but in this document is something else besides that; in fact, most of it is something else according to the statement he handed me. There are three pages devoted to liabilities and the rest of it is about assets. He has got it headed here, "Comparison of Assets and Liabilities." Now what the assets were on February 1st and what they were on July 29th, is not material to



the issues here, and the assets, anyway, and the value of them, can't be proven by this method. It isn't material, anyway.

Mr. Adams: So that we may meet the objection and try to save as much trouble as possible, we will introduce that portion of the statement showing the liabilities as of February 1st, 1916, and ask that that portion be copied in the record.

Mr. Post: Why not make an exhibit of it?

Mr. Adams: Because it has the other matter in there and I want to make a separate offer on that, and you can object to that and the court may rule on that.

Mr. Post: That is the three pages here, the pages he has marked k, 2 and 3?

Mr. Adams: Yes, that would cover the liabilities of February 1st, 1916. The pages that refer to the liabilities of February 1st, 1916, we offer.

Mr. Post: As I understand, Mr. Katz, you have got the books and vouchers here, and when I cross-examine you you can produce them?

Mr. Adams: Certainly.

Mr. Post: I am simply making the objection in respect to this, the objection I made before, that the matter of the amount of the indebtedness is not material; that is the objection your Honor overuled when we first started in; I am not objecting to those going in this form.

The Court: The objection will be overruled and they may be admitted when properly marked for identification.

Pages marked Respondents' Exhibits No. 3 were then admitted.

## STACK-GIBBS LUMBER COMPANY.

*Liabilities According to the Books on February 1st,  
1916.*

*Notes:*

C. M. Youmans Lumber Co.....	\$ 19,500.00
Exchange National Bank, Spokane.....	21,000.00
Merrill, Cox & Co.....	221,370.22
Idaho Timber Co.....	60,000.00
Minnie A. Gibbs.....	12,725.00
Fort Dearborn Nat'l Bank.....	107,000.00
Lumberman's State Bank.....	2,500.00
Jas. McInnis .....	500.00
D. H. Dollar Logging Co.....	5,602.49
First Nat'l Bank, Lincoln.....	12,500.00
J. A. Thornton.....	6,551.45
Greer Fuel & Ice Co.....	1,678.45
C. d'A. Exchange Nat'l Bank.....	5,000.00
Shoshone Timber Co.....	5,000.00
Dan Bell .....	600.00
Central Warehouse Lbr. Co.....	32,948.40
Loonan Lumber Co. (about).....	4,239.98
Rogers Lumber Co. (about).....	1,835.91
Salzer Lumber Co. (about).....	4,280.00
Bardwell-Robinson Co. ....	3,681.40
Lampert Lumber Co.....	9,559.68
Empire Lumber Co.....	9,078.48
Total.....	<u>\$547,151.46</u>

Notes of First and Sec. Nat'l Bank,  
amounting to \$25,000.00, which were on  
books, were cancelled during February.

*Log Contractors:*

Atlas Tie Co.....	14,228.85
John Carter .....	13.44
A. J. Callis.....	2,904.87
A. S. Campbell.....	327.70
D. H. Dollar.....	3,091.03
Mrs. F. A. Dawson.....	63.35
F. E. Hemmingway.....	1,370.59
O. C. Hopkins.....	116.22
W. W. Papish.....	17.32
J. A. Thornton.....	24,982.15
J. C. White.....	572.84
Total.....	47,688.36

*Back Salaries:*

Hugh Craigie .....	325.00
W. D. Richardson.....	264.85
Gust Prestegaard .....	229.24
J. A. Mullen.....	260.15
James McKay .....	263.10
O. Ludington .....	120.00
A. E. Lane.....	728.54
A. W. Lammers.....	200.00
Mrs. J. Hughes.....	32.00
Tom Devine .....	123.35
C. A. Cassidy.....	242.67
R. B. Canfield .....	181.90
W. A. Armstrong.....	570.85
C. W. Crotty.....	77.11
W. T. Keith.....	79.36
Total.....	\$ 3,698.12

*Overdraft:*

Exchange Nat'l Bank, C. d'A.....	15,431.09
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*Other Open Accounts:*

C. d'Al. Log Owners Assn.....	105.71
J. A. d'Aoust.....	1,790.93
M. Sauve .....	40.00
St. Joe Boom Co.....	644.12
Mrs. G. H. Tolerton.....	14,772.25
Voorhees & Canfield.....	1,586.23
E. T. Chapin Co.....	.18
Alcorn Drug Co.....	3.25
American Trust Co.....	30.00
Atlas Tie Co.....	36.63
Bradstreet Co. ....	100.00
C. d'Al. Cab & Auto Co.....	4.00
City Drug Co.....	5.90
Commercial Print Co.....	42.75
C. d'Al. Grain & Milling Co.....	311.95
C. d'A. Machine & Repair Works.....	.75
C. d'Al. Timber Pro. Ass'n.....	318.40
R. G. Dun & Co.....	125.00
Ft. Doge Lbr. Agency.....	12.20
Home Electric & Supply Co.....	.75
Interstate Utilities Co.....	19.87
Koehler & Holt.....	4.80
Kootenai County State Bank.....	468.11
Kootenai Hardware Co.....	10.24
Fred Kuehle .....	12.23
Lake City Hardware Co.....	12.15
Lumbermen's Pub. Co.....	156.25
Lumbermen's State Bank.....	11.55

Lumber World Review.....	37.00
Lumbermen's Review .....	1.00
McCrea & Merryweather.....	610.00
Marshall-Wells Hardware Co.....	113.77
Mechanics Loan & Trust Co.....	586.21
Panhandle Abstract Co.....	34.00
Panhandle Abstract Co.....	3.00
Powell Bros. ....	58.00
Red Cross Drug Co.....	1.30
Remington Typewriter Co.....	7.30
St. Maries Dray & Tfr. Co.....	1.00
Shaw & Borden Co.....	3.06
Shoshone Abstract Co.....	4.50
Spirit Lake Pub. Co.....	2.75
A. D. Storms.....	10.70
Union Iron Works.....	14.34
W. U. Telegraph Co., C. d'A.....	53.89
W. U. Telegraph Co., Spokane.....	7.57
White Pine Sash Co.....	293.68
E. R. Whitla.....	81.05

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Total.....\$ 22,550.32

Total liabilities as per books, Feb. 1st... 636,519.35

*Liabilities Not on Books on Feb. 1st, 1916, But in  
Existence Then and Added Later On.*

Back Taxes .....	\$ 1,465.16
C. M. & St. P. material acc't.....	1,139.08
C. M. & St. P. Tyson Creek acc't.....	3,552.79
Disputed taxes .....	2,592.69
Mutual Life Ins. Co., loan.....	3,767.64
Mortgage on Spokane property.....	2,666.67

Balance Due Log Contractors:	
A. J. Callis.....	1,481.15
D. H. Dollar.....	14,856.19
F. E. Hemmingway.....	1,216.70
Freight on logs.....	7,595.85
	<hr/>
Total.....	\$ 40,333.92
Grand Total of Liabilities.....	\$676,853.27

Q. As a matter of fact, did the liabilities of the Stack-Gibbs Lumber Company decrease any from February 1, 1916, to July 29, 1916?

Mr. Post: I object to that as incompetent and immaterial. It has nothing to do with this case. It can't affect the claim of the Mechanics Loan & Trust Company one way or the other, whether Mr. Katz decreased or did not decrease the liabilities in operating that plant between February 1st and July 29th.

The Referee: I take it this question is preliminary and will overrule the objection.

Mr. Post: Exception.

The Witness: I have made a statement here of the liabilities of July 29th, 1916. The liabilities of the Stack-Gibbs Lumber Company did not decrease from February 1st, 1916, to July 29th, 1916. In neither the February 1st, nor July 29th statement did I include in the statement of liabilities which have been offered in evidence as Respondents' Exhibit No. 3, those items upon which the Stack-Gibbs Company were either endorser or guarantor; and among them which I did not include, was the claim of I. F. Searle for \$55,000, First National



Bank of Lincoln, Nebraska, \$12,500, yes, that was, I think, included; S. H. Hess, \$30,000, was not; J. K. Stack, \$110,000, was not, and I did not include the note secured by the trust deed given by the Dryad Lumber Company to the Mechanics Loan & Trust Company of approximately \$92,500 upon which the Stack-Gibbs Lumber Company was the guarantor.

Q. Now, Mr. Katz, in preparing this statement and in your researches of the records of the Stack-Gibbs Lumber Company and the records of this court, did you prepare a statement as to whether or not the business of the Stack-Gibbs Lumber Company from February 1st, 1916, up to July 29th, 1916, was conducted at a profit or a loss? (381)

Mr. Post: I object to that as wholly immaterial.

The Referee: The objection will be overruled.

Mr. Post: On what ground, if your Honor please, I was going to make some objection in respect to it, but I do not understand on what ground this can be in any way material.

The Referee: I was going to suggest that if its materiality is in doubt the court is desirous of getting before it all the facts, and, of course, give them such weight as appears to be proper.

Mr. Post: I wish to say if we are going into the question of whether Mr. Katz lost money or not in this operation there between February 1st and July 29th, we are going to take some considerable time doing it, because it can't be handled in just a few minutes and we are not going to take Mr. Katz's

word on the subject for some schedule of figures he may get up here. Now, of course, to start with, there isn't any pleading here at all. There is not any such objection filed to the allowance of our claim. They do not make any such objection in their answer to the petition filed by the Exchange National Bank. The petitions, objections and answers were read by Mr. Post.

The Referee: I think I shall permit the ruling to stand.

Mr. Post: Exception.

The Witness: It was operated at a loss.

Q. Is that a portion of the statement you have prepared, the three pages of which have been marked Respondents' Exhibit No. 3?

A. Yes.

Q. Now, Mr. Katz, was the business conducted at a profit or at a loss? (388)

Mr. Post: I object to that as wholly immaterial and inadmissible under the pleadings and their objections.

The Referee: Overruled.

Mr. Post: Exception.

A. At a loss.

Mr. Adams: Will you please tell the court what the amount of the loss was? (389)

Mr. Post: Same objection.

The Referee: Overruled.

Mr. Post: Exception.

A. \$43,812.02.

Q. Now, Mr. Katz, how did you come to get up that statement?

Mr. Post: I object to that as wholly immaterial.

The Referee: It will be overruled.

Mr. Post: Exception.

The Witness: At a meeting in the Exchange National Bank Mr. Post referred to, the question came up if there was any money lost or made, and Mr. Post made a statement that he thought there was no money lost, maybe even some made, and you (Mr. Adams) made the statement that there was money lost, and at that time I know too there was money lost, there was a bunch of money lost and so Mr. Post said then, you get up a statement and go into these facts very thoroughly and get it out, and I said certainly, if I can, and he said all right, and let me have it about the first of February, and I said in order not to be charged with any partiality I will give this statement to both of you on the same date and I was under the opinion that you would be here about the beginning of February because the meeting was set for the 5th at that time, and inasmuch as the meeting was postponed (391) I kept this in my pocket until this morning.

Mr. Post: I move to strike that answer out as wholly immaterial. So far as any issue in this case is concerned, Mr. Adams, I think it is one of the facts and circumstances surrounding the preparation of that report.

Mr. Post: Because we had a disagreement on a subject and suggested that he try to get up a statement, does not authorize it to go in evidence.

The Referee: The answer relates, of course, to

the history of this document that is in evidence here, and, of course, it isn't of any materiality in itself but I will permit it to stand.

The Referee: The motion is overruled.

#### CROSS-EXAMINATION.

By Mr. Post:

Mr. Post: Nothing offered in evidence on this statement except the first three sheets marked?

Mr. Adams: We will offer the balance of those sheets that have not been marked, as Respondent's Exhibit No. 4.

Mr. Post: I object to it as incompetent and immaterial and also that this is a compilation of figures that states conclusions. (392)

The Referee: What is the purpose of this offer with reference to Exhibit No. 4?

Mr. Adams: The only purpose is this, if we are accused by counsel of not putting that in evidence showing how we arrived at those figures or withholding from the record any figures we are perfectly willing the compilation prepared by the witness shall be before the court and be used by counsel on cross-examination to arrive at a method by which the witness arrived at his testimony. Nothing will be hidden or kept from the court or counsel.

Mr. Post: I submit that he ought to answer the question, what is the purpose in trying to show that Mr. Katz in his operation there lost money.

Mr. Adams: No, I understood the Court to ask me why I offer Respondents' Exhibit No. 4.

This report appears to be quite incomplete with-

out Respondent's Exhibit No. 4; it isn't material. Mr. Post's objection is well taken, but in order to have the entire report together for the consideration of the court, I should overrule the objection and admit it for what it is worth.

The Referee: I will overrule the objection. (393)

Whereupon said pages were admitted in evidence and marked Respondents' Exhibit No. 4.

RECAPITULATION OF ASSETS AND  
LIABILITIES.

	<i>Loss.</i>	<i>Gain.</i>
Liabilities Feb.		
1, 1916 .....	\$676,853.27	
July 29 .....	692,774.49	
	<hr/>	
Increase in liabilities.....	\$ 15,921.22	
Bills Receivable and Outstanding Accounts:		
Feb. 1, 1916.....	\$ 31,360.28	
July 29, 1916..	\$48,609.72	
Gain in accounts .....		\$ 17,249.44
Reduction in assets.....	80,568.10	
Addition to assets.....		16,540.36
Gain in lumber.....		18,887.50
	<hr/>	<hr/>
Total Loss .....	\$ 96,489.32	
Total Gain .....		\$ 52,677.30
	<hr/>	<hr/>
Total loss of Stack-Gibbs Lumber Co., between Feb. 1st, 1916, and July 29th, 1916 .....		\$ 43,812.02

*Liabilities as per Schedule—July 29, 1916.*

## Schedule A-1:

Taxes .....	\$ 3,197.80
Wages and salaries.....	13,384.10

## Schedule A-2:

Secured .....	\$34,434.31
Less Sunset Timber Co.....	8,500.00
	25,934.31

(Engine was returned and liability cancelled.)

## Schedule A-3:

Notes .....	557,058.77
Open account .....	\$86,975.72
Less Cascade Lbr. Co.....	829.00
	86,146.72

(Jammer was returned and liability cancelled.)

## Schedule A-4:

Empire Lumber Co.....	3,500.00
C. M. & St. P. Tyson Creek Ry. Acct.....	3,552.79

(Bond issue and assigned invoices mentioned in Schedule A-4 are only contingent liabilities.)

Total.....	\$692,774.49
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*Bills Receivable and Outstanding Accounts, According to the Books on February 1st, 1916.*

(Only those are mentioned which were good and collectible, all others on the books were no good.)

## Bills Receivable:

Gust Swanson .....	\$ 157.46
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## Outstanding Accounts:

H. F. Cleland .....	\$ 26.29
J. F. Cox .....	3,000.00



W. A. Gibbs.....	190.83	
National Pole Co.....	689.13	
Freight claims (about).....	500.00	
Harrison Box Co.....	115.16	
Hogan & West.....	184.18	
S. H. L. Lumber Co.....	281.02	
N. P. Ry. Co.....	473.72	
Balances from customers (about) .....	500.00	
	<hr/>	
Total.....		5,960.33
Deposits in Banks:		
Exchange Nat'l, Spokane.....	\$15,431.09	
Ft. Dearborn Nat'l.....	14.26	
First Nat'l, Winona.....	238.88	
First Nat'l, Lincoln.....	9,558.26	
	<hr/>	
Total.....		25,242.49
		<hr/>
Total.....		\$ 31,360.28

*Bills Receivable and Outstanding Accounts of  
Schedule.*

Only those that were good and collectible are listed here.

Schedule B-2. July 29, 1916.

Notes:

Gust Swanson .....\$ 157.46

Schedule B-3.

Open Accounts:

J. F. Cox.....	\$ 3,000.00
Rutledge Timber Co.....	2,862.55
Freight claims .....	300.00
Harrison Box Co.....	428.56

Hogan & West.....	175.00	
R. F. Kerchival.....	48.35	
S. I. Ry. Co.....	37.44	
W. O. Eichelberger.....	2.01	
Clarence Schock .....	137.06	
Atlas Tie Co.....	1,934.96	
Balance Assigned Accts.		
	\$10,511.04	
Less .....	2,500.00	
	<hr/>	8,011.04
(Deductions from customers, also discount and interest.)		
Insurance policy .....	685.25	
Deposit, Fort Dearborn.....	20,871.45	
Deposit, Winona .....	25.79	
	<hr/>	
Total.....		38,519.46
Schedule B-4:		
Gov't Timber Refund.....		9,932.80
		<hr/>
Total.....		48,609.72
<i>Reduction in Assets Between February 1st, 1916, and July 29th, 1916.</i>		
Stumpage:		
A: Timber Cut from Our Lands and Worked Up by Us.		
2,215,012 ft. white pine, \$4.00..	\$8,860.05	
3,572,760 ft. yellow pine, \$1.00	3,572.76	
915,550 ft. mixed timber, 50c..	457.78	
	<hr/>	
Total.....		\$12,890.59
B: Timber Cut From Our Lands and Sold.		
About 1,000,000 ft. mixed timber, 50c.....		500.00

Logs:

A: On February 1st, we had on the banks of rivers, ready to be driven and delivered as follows: (Market price less cost of delivery, \$1.50 per M.)

4,874,833' white pine, \$11.50..	\$56,060.55
257,330' yellow pine, \$6.50.....	1,672.64
671,696' mixed timber, \$5.50..	3,694.32

Total.....	\$61,427.51
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B: Logs sold about 500,000 ft. mixed timber, \$5.50 .....

	2,750.00
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Sundries:

Sale of Ramsdell dock.....	3,000.00
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Total .....	\$80,568.10
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Addition to assets between Feb. 1st, 1916, and July 29th, 1916. Which assets were still on hand July 29th, 1916. (Prices are those of appraisers.)

Commissary supplies .....	\$ 525.86
Dynamite .....	609.50
Horses and harnesses.....	7,750.00
Oats .....	375.00
Kitchen equipment .....	75.00

Logging Equipment:

Jammer .....	\$ 600.00
Pipes .....	540.75
Big wheels .....	1,000.00
Oil tanks.....	200.00
Camp equipment .....	1,352.35
Tools .....	557.85
Sundries .....	147.97
	<u>4,399.92</u>

Logs, purchased and on hand yet:

807600' Yellow Pine..... 8.00    646.08

Logs, in mill pond, on hand Feb.

1st, in woods, expenses of de-  
livery:

24200 @ \$2.50 per M..... 605.00

Logs, in woods, cut from our

lands, labor performed on them:

259000' @ \$6.00 per M..... 1,554.00

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Total .....\$16,540.37

Lumber on hand Feb. 1st, 1916 4,612,000 ft.

Lumber on hand July 29th, 1916 5,864,000 ft.

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Gain .....1,252,000 ft.

1,252,000 ft. @ \$15.00 per M

(average cost price)..... 18,720.00

Lath on hand Feb. 1st, 1916...1,844,000 pcs.

Lath on hand July 29th, 1916...1,978,000 pcs.

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Gain ..... 134,000 pcs.

134,000 pcs. @ 1.25..... 167.50

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Total Gain..... \$18,887.50

Mr. Post: Exception.

The Witness:

The only reason that I did not see it, the claim of I. F. Searle for \$55,000 in liabilities, was because the Stack-Gibbs Lumber Company was only a guarantor of that particular indebtedness, but of course it was an indebtedness. (394) The Stack-Gibbs was guaranteeing the notes which the Dryad

Lumber Company had given upon a separate document that I haven't got here. That paper Mr. Searle must hold, I have never seen it. I see from the claim that they filed in the estate that the Stack-Gibbs are only guarantor.

Q. I understand that you stated a minute ago the reason why you left Searle out of the Stack-Gibbs statement was because the Stack-Gibbs was only a guarantor; that information you didn't get from the books and account but from a statement here in court?

A. That is correct. (395)

The Witness:

And that is true with reference to Mr. Stack and Mr. Hess. I knew at the time I made up the statement that Mr. Searle, Mr. Stack and Mr. Hess had signed the trust deed as one of the creditors of the Lumber Company. In making a comparison of this statement, I didn't have any other statement before me. (396) I have here the bills payable book and I find the Yeomans account on the book. (400) I am looking at Mr. Yeoman's claim here, simply for the reason that it gives me the date and enables me to find it quicker. These are the original notes for \$19,500. They were supposed to be secured through lumber which was stacked in the yard but there is a controversy about that. I found some written agreement with Yeomans or his company about lumber. A copy of the agreement is attached to their claim. That agreement was made in January, 1914, (401) and under that agreement the Yeo-

mans account was to be secured by lumber. That was the situation as it existed on February 1st and has existed in that situation ever since I assume with the exception that lumber was substituted. Lumber on hand February 1st as security was not on hand July 29th, but a different amount of lumber was marked. After I came here, I used up some of that Yeomans lumber and sold it. The next item, the Exchange National Bank \$21,000, that item is made up of the \$6,000 they signed for on the trust deed and the \$15,000 notes that Mr. Coman and I have both testified that were marked cancelled some time or another.

Mr. Adams: While Mr. Katz is making his figures, your Honor will recall we asked Mr. Coman to produce the receipt which he received from Post, Russell, Carey & Higgins for the notes which are set forth in the Mechanics petition. The receipt has been furnished, a copy, which we have agreed (402) to treat as the original and we offer it in evidence as respondent's exhibit No. 5.

The Referee: It may be properly marked and admitted.

Said receipt admitted in evidence and marked Respondent's Exhibit No. 5.

The Witness: The third item, Merrill Cox & Company, \$221,370.00. There were \$182,000 in notes, and at that time there was an open account of \$32,500, totalling \$214,500, so it was less than on February 1st; I see from the books here that Merrill Cox & Company made new loans in January,



1916. On January 1st, the notes of Merrill Cox & Company amounted to \$182,000 and on January 1st, 1916, an open account of \$32,500. (403) That makes the total indebtedness of \$214,580 on January 1st and more money was borrowed between that time and February 1st. January 7th it increased the money on open account and gave notes for it. The account of the Idaho Timber Company, Minnie A. Gibbs and Fort Dearborn National Bank, were the same as they signed the trust deed I think. The next item is Lumbermen's State Bank, \$2,500 that is the bank at St. Maries which I paid. There was no security and the item of James McInnis for \$500 is a supply note. Mr. McInnis is a logging contractor but the note was not secured. The next item is D. H. Dollar Logging Company, \$5,602.49. Yes, those are all notes. These were notes which were given by the Stack-Gibbs to supply people who had furnished the Dollar Logging Company with logging supplies, and inasmuch as we owed the Dollar Logging Company money we gave those supply companies notes and charged it to the Dollar Logging Company. Those notes have all been paid. (405) There were notes issued to Stanton and Powell-Sanders and Interstate Rubber Company and some other concerns, and the amount was \$1000 due May 17th. They were issued on January 19, all of them on the same date, 1916, \$838.48 due April 18th, \$1000 due May 19th. They were the same, D. H. Dollar Logging Company, \$875.00 April 12th, \$1389.09 March 30th, \$500 on February 28th,—all

in 1916. Under the logging contractors I remember an open account D. H. Dollar Logging Company on page 1. D. H. Dollar Logging Company and D. H. Dollar are the same thing. On February 1st, it shows an open account of \$3091.03. I think Dollar will appear there once more in showing under the heading not shown on (406) the books. We had several contracts running with D. H. Dollar Logging Company on which the balances were due and they didn't show on the books those contracts hadn't been quite completed yet but the fact was it was due Dollar only at this time, and if they didn't show under D H. Dollar they ought to have shown under due logging contractors. The reason they gave me was they didn't want to put it on Dollar's account so he couldn't ask for the money. The item, D. H. Dollar \$14,856.14 is in my exhibit under the heading of "liabilities not shown on books February 1st, but now appears on the books." I put it on there, in the course of the business I found it out. That is the balance due on logging contractors and there is no litigation about it. It is litigation only that they didn't get the money; at least I have never seen the complaint that Mr. Dollar made. (407) Between February 1st and July 29th, we paid Dollar quite a little money. We credited D. H. Dollar Logging Company between February 1st and July 29th for balances approximately \$12,000—I mean \$22,000. That is for a balance on Logging contracts. The work was done, we were supposed to take up the logs on skids or

on the banks of the river and credit them with the amount, but we credited him only with part of it. (408) (The witness here outlined the litigation existing between the Dollar Logging Company and the Stack-Gibbs Lumber Company with reference to their claim.) (410) Mr. Whitla stated that the trustee claimed that the account had been paid except \$3,000. The item of Greer Fuel & Ice Company, \$1,678.45, was a note with no security. (412) That has been paid. It was paid after February 1st. \$1,000 I remember was paid before I came, and \$658.45 I paid. The next item, the Coeur d'Alene Exchange National Bank, \$5,000 was not secured. It has been paid about April 27th, 1916. Shoshone Timber Company, \$5,000 has not been paid. I think they claimed preference on account of some timber—something like that. (413) I remember having seen a contract of some sort with them to secure it.

Mr. Danson: It was a sale of timber and they reserved a lien upon the timber.

The next statement is Dan Bell, \$600. That has not been paid. The next is the Central Warehouse Company. I think it was \$11,592 on January 1st. (414) —\$11, 592.83. \$25,000 more they borrowed, but we paid some back by the time that February statement was made. This money was advanced on Lumber purchased and we had a note for it and the Central Warehouse Company had a contract whereby these advancements were to be paid in certain lumber. I am positive a note was given, I

saw the notes I think, I mean I saw the note in the claim they put in. I know when I came, it wasn't on the books in that form, and I had it put on the books as a note because it was a note; it appears on the customer's ledger. That is the Central Warehouse Company account that is mentioned in the trust deed. The next item is the Loonan Lumber Company for \$4,239.98, an advance on lumber, that is the same kind of an account as the Central Warehouse Company. The next item is Rodgers Lumber Company \$1800 and that was an advance of lumber like the Central Warehouse; and the same is true about the Salzer Lumber Company \$4,280. Notes were given in each of those instances. I think they have been paid except that we owe the Loonan Lumber Company about \$500, otherwise they have been paid in lumber. (416) I paid them in lumber after I came here. I also paid some of the Central Warehouse Company's claim with lumber, about three or four thousand dollars. The next item is the Bardwell-Robinson Company \$3,681.40 for lumber advancements. I think a small part of that was paid with lumber and the rest paid back in cash. That was paid before I got here. The next item, the Lambert Lumber Company, was an advance on lumber, that was paid back also in cash before I came. That come out in those proceedings, in which (417) the expenditures were mentioned between February 1st and February 10th; it must have been around February 10th or 11th. February 12th, it was paid, Lam-

bert and Bardwell-Robinson both. As to the Empire Lumber Company, part of it was paid and part not paid. That was a different contract. The Empire Lumber Company gave promissory notes, I mean notes in favor of the Stack-Gibbs Lumber Company so that the Stack-Gibbs Lumber Company was able to resell those notes and they got as security, lumber. The Empire Lumber Company gave its promissory notes to the Stack-Gibbs and the Stack-Gibbs gave lumber to it as security therefor so that the \$9000 item was secured by lumber and paid, part of it has been paid and part not. It has all been paid except \$3500. (418) That is partly after I came and before I came in lumber. The next item is logging contractors, Atlas Tie Company, \$14,228.85. That is an open account and was carried on the books as an open account. It has been paid through the sale of logs. There was a contract with them, I don't know whether the account was secured or not. The contract was that they should advance the money and be repaid in logs. The account of A. J. Callis, \$2904.87, was simply money owing for logging contract, that man sold us logs and we owed him money. (420) That is not all paid but what was paid was in cash. There was some kind of a contract, we bought logs from him. He is in the same boat with the D. H. Dollar Logging Company and there is some controversy over this item of \$2,904.87. He got some money and there was more coming to him and according to our books what is coming to him now is only a



few hundred dollars, and he claims a few hundred dollars more, and there is a dispute, but it does not amount to much. The next item is Campbell \$327.70. I think that has been paid during my administration. The next item is D. H. Dollar, \$3,091.03, that I referred to a little while ago. The next item is only \$63.00 and the next one, Hemmingway \$1730.69 which is for logs that were bought outright from him and paid for in cash. (422) Since the time that I came here on February 16th, I signed checks to Hemmingway for this amount together with other proper signature and now getting down to J. A. Thornton here, \$24,982.15, that was a logging contractor from whom we bought logs or rather he worked up our own timber into logs and we paid him for doing it. He got cash for it or we paid him cash in notes. We owe him quite a little money yet, rather it has been paid now under the bankruptcy proceedings as a preferred claim under a labor lien. (423) On July 29th, we still owed him money to the extent of about eight or nine thousand dollars. I do not know exactly the amount. Between February 1st and July 29th the Stack-Gibbs paid him in either cash or notes or paid material for him—paid to his creditors. Mr. Thornton had no security for the \$24,000 except the statutory lien that he filed later on. Now the account of J. C. White \$572 is the same way, that has not been paid yet. On the next page there are several items of salary amounting to \$3700. Those showed on the books (424) salaries



owing to employes of the Stack-Gibbs Lumber Company that hadn't been paid for two months and that was due on February 1st. Down below is the overdraft the Exchange National Bank, of Coeur d'Alene which is an overdraft for this amount you have here \$15,431 on February 1st. The bank had no security; not that I know of not any security known to me when I came. That overdraft was there according to the books of the Stack-Gibbs Lumber Company. I do not think it was put into a note, I think it was eventually paid in cold cash. On the next day, February 2nd (425) there was an overdraft, the same, about \$15,000. It was picked up already on the second—I want to take this back, I got into the wrong column—on the — of February, 1916, the overdraft was \$12,500; on the 3rd the overdraft was \$10,000, on the 4th overdraft was about \$9,000; on the 5th about \$8,000; on the 7th about the same; on the 8th still the same; on the 9th it was about \$6,000; on the 10th about \$7,000; on the 11th \$6,000; on the 12th \$6,000; on the 14th about \$5,000; on the 15th about \$4,000; on the 17th about \$1,000; 18th it went up to \$2,000 again and so on; on the 19th it was \$2,000 again; 21st was closed out and the overdraft paid. Those overdrafts were paid by cash, checks on other banks. I understand before I came they did considerable business with the Exchange National Bank of Coeur d'Alene. (425) I do not know whether the bank here had any security or not. This item of the Coeur d'Alene Log Owners Association, J. A.

D'Aoust, I do not know any more what it was or who it was. I do not know whether I paid it or not, I think it was paid before I came. The St. Joe Boom Company, we still owe them money and there was no security over it. They claim a lien against those same logs that we were talking about, those Dollar logs. We agree at the amount; the amount has been increased considerably since and there is no controversy at all. Mrs. Tolerton, I think she signed for about \$20,000. There is a controversy of about six thousand dollars. Voorhees & Canfield, \$1586, there is no controversy about that that I know of. (427) They have not been paid. I do not know anything about the Coeur d'Alene Grain and Milling Company, \$311. I think it was paid. As to security, all those here that are mentioned that are mostly repair people and supply people and things like those, and little accounts there was no security, they simply sold us merchandise. The Kootenai County State Bank, \$468.00 was an insurance account, they had no security. The Lumbermen's Publishing Company was for an advertisement. McCrea & Merryweather \$610 was for insurance. Marshall-Wells Hardware Company \$113.17, that is for some kind of material. (428) Mechanics Loan & Trust Company \$586.21, that was for insurance and to get down to the White Pine Sash Company, \$293.68, that was not secured. E. R. Whitla \$8105, he got the money.

Q. Under liabilities not on the books, you put down here a lot of things not on the books?

A. Yes.

Q. Back Taxes?

A. That is correct. They paid only half the taxes in January according to their option, but they didn't put the other half on the books as owing. Here is unpaid taxes (showing the ledger) I opened an account, unpaid taxes, March 31st. I mean I told the bookkeeper to open it and write it down; I wasn't keeping the books. The next item, Chicago, Milwaukee & St. Paul, material \$1139.08, that account was over two years old. (429) That account was not on the books. I opened it up on April 12th, 1916, that is I had the bookkeeper do it. The railroad collector came in and wanted the money and I told him there was nothing on the books and they sent me an itemized statement and I had it checked up as well as I could and then I put it on the books. That has not been paid nor has the railroad been secured. The next item, Chicago Milwaukee & St. Paul, Tyson Creek, \$3352.79, I haven't got that here today, I can bring it tomorrow and show it to you. The question on the item of disputed taxes \$2592.69, I haven't put this on the books yet. I have put them down here because they also appear on the schedule and I had to show them on both sides. (430) They are disputed taxes. The company does not owe them. There was a tax dating back to the year 1910, 1911 and 1912, a disputed Federal tax, it is an income tax. I did not pay it. The item of the Mutual Life Insurance Company loan \$3,767 (431). The

Stack-Gibbs insured its president, Mr. Gibbs, for I believe \$100,000 and after the premium had been paid they borrowed cash value and hypothecated the policy. I do not remember when I put that on the books. I put it on the books—it must have been between March 23rd and March 28th. The entry is in the handwriting of the bookkeeper placed there at my instructions. The money was borrowed on November 16th, 1915. I do not know how I found out about it, I found out a whole lot of things by looking into them. The next item is the mortgage on the Spokane property \$2666.77. That is a mortgage on property which the Stack-Gibbs Lumber Company owned in Spokane together with another party. The Stack-Gibbs Lumber Company built some houses in Spokane and then when they needed the money they borrowed on it. (432) The Washington Trust Company or something like that holds the mortgage. The note was signed by the Stack-Gibbs Lumber Company. That did not appear on the books when I came here and I don't think that I put it on. I don't think it is on the books yet. Now to get down to the balance due for logging contractors, Callis so much, Dollar so much, Hemmingway so much, they are disputed items, in so far as the people claim still more. I want to correct it this way, they claim still more than the books show on July 29th. That is our account on February 1st. It has taken changes back and forth since, and the dispute is not for the amount at that time because we didn't know what we had on the

books at that time, but the dispute is about the amount owing them now. The Callis item was not on my books February 1st. In April we put on \$1233.03 (433) but the date is left out here. On July 29th, when we brought the books up to date, they told me that they had held back ten per cent for a certain amount owing to them on account of some kind of controversy to which he was entitled and they put it on the books. Before April, Mr. Callis had an account on the books which showed the other account that I have on page one of the exhibit here, which is the same as exhibit 3, \$1851.50; and in April, I added to that account. The amount added is \$1485.15 in April and July 29th. In April it was \$1233.03 and in July \$248.12. The dispute over those items we have with him is about (434) a certain scale which we made since, and for which we charged him that he does not concede it. The only controversy is there, is about \$100 to \$150. Two items that you point out, \$1200 and \$200 as to whether they are old notes, how they didn't get on the books, the reason is the following: A concern that wants to keep their books straight and know how they stand at all times, if they hold back an amount which they owe a customer for a balance on a contract or anything like that, they ought to open up an account just like I showed you unpaid taxes or unpaid freight and show at any time at the end of the month how they stood. but they had a habit of putting things in the books only when they were ready to pay them, or the men asked for



them. They were put on the books when we paid them or when I found it out. It happened all the time, somebody came in and asked for money and I had to ask for a statement first. (435)

WHEREUPON an adjournment was taken until February 21st, 10:00 A. M.

(The cross-examination of Siegmund Katz by Mr. Post was resumed.)

Now as to the accounts that were secured, the first item is the Yeomans item and the next one is the Shoshone Timber Company \$5000. All those are for lumber advances, I do not know if you can call them security because there was no special lumber purchased for them. (436) There was a contract—Central, Loonan, Bardwell, Lambert, Empire Lumber Company—there was a contract of lumber shipment. Atlas Tie Company was a similar contract. There were logs to be sold to them. I do not think there are any more. Thornton's name is on there. There is nothing else as to secured contracts on page 2 or three except the liabilities not shown on the books, Mutual Life Insurance Company. The two items which appear here are \$3767.64 and \$2666.67. (437) We made up this statement from schedule instead of the books. The Yeomans Lumber is the same in the schedule as in the book schedule A 2, page 1. I put it down making my figures \$19,500. (438) The interest was paid until July 1st, I believe, I didn't consider the interest on February 1st nor on July. I paid some interest on that after I came here. That is



something we paid \$378.61 on March 20th but paid nothing after that. The next item that I have on my Exhibit 3 is Exchange National Bank \$21,000 and I have on my schedule of July 29th \$6000. That is the note that was renewed and we paid interest on it at the rate of six per cent, \$120. On April 4th we paid \$60 and on July 13th. The next item is Merrill Cox & Company \$221,000; I have that on my schedule for July 29th in the same amount. (439) We paid Merrill Cox interest in two ways, one was in the beginning cash payment, and later on we stopped paying interest on all the notes and then we gave them demand notes for the interest. We paid in cash about \$3200. We made these payments at different times. Taking up the item of \$692,000 plus, as the liabilities on July 29th, I have not figured any expense whatsoever, interest or anything else but the amount there includes interest which we owed Merrill Cox & Company. The total that I put in my schedule was \$225,345.-92. (440) The next item, the Idaho Timber Company, that item at \$60,000 in the schedule for July 29th but the Idaho Timber Company appears in the schedule for a higher amount because the interest has been computed. In making up my total amount of liabilities, the Idaho Timber Company is mentioned at \$60,993.77. It is \$60,000 on page A3-2 and \$993.77 on page A3-6, and in my grand total I put the Idaho Timber Company in at \$60,993.77. We paid the Idaho Timber Company some interest, (441) about \$200. In my grand total, I have Mrs.

Gibbs for \$12,725, paid \$248.69 interest. We have in the compilation for July 29th, I have the Fort Dearborn National Bank for \$107,000 and we paid interest of \$1,055.33. These were paid for, all the renewals up to March, about the middle of March; from then on we didn't pay them any interest. We owe them interest in addition to the schedule. I am referring to 1916. The next item is the Lumbermen's State Bank, \$2500. That is not in the grand total for July 29th, that was paid. \$1500 was paid on April 22nd, and \$1000 was paid on March 31st, 1916. (442) The payment was made, it included a certain amount for interest, \$20.00 March 31st and \$30 on April 24th. The next item is James McInnis \$500, that was paid on March 1st. The amount of interest on that does not show here. The item of D. H. Dollar Company \$5602.49, that was paid at different times. It does not show in the grand total. The amount of interest on that item was paid, \$203.69. The next item, First National Bank of Lincoln, \$12,500, that is included in my schedule of July 29th but it appears under the name of I. F. Searle, because that was evidently transferred from the First National Bank of Lincoln to I. F. Searle, and it is \$12,689.58; \$12,500 for notes, and \$189.58 interest which was due. That is the way I figured it in making that total that I have in exhibit 4. (443) I think there was some interest paid after I came here, on that, \$112.91. The next item is J. A. Thornton \$1551.45, that was not paid. The next item is the Greerer

Fuel & Ice Company, \$1678.45, that is included in the grand total of July 29th—no I misunderstood you, that has also been paid together with interest of \$17.50. The next is the Coeur d'Alene Exchange National Bank, \$5,000 (444) that has been paid with interest, \$166.67. The next, the Shoshone Timber Company, \$5000,—that has not been paid. It was included in my statement of July 29th but in that sum. There was no interest paid on the Shoshone Timber Company. The account of Dan Bell has been increased to \$700 and we owe him some money on open accounts. The total amount I understand is \$1134.60 and I think we paid some interest on it. (445) The Central Warehouse Lumber Company is in this account, \$25,294.01. There was no interest paid on this but between February 1st, and July 29th there was paid \$7,653.-59. The next item is the Loonan Lumber Company, that was put into the statement only for \$493.84. The difference was paid but no interest. Rodgers Lumber Company, that does not appear. It was paid in full. The Salzer Lumber Company was paid in full and no interest paid. (446) Bardwell-Robinson Company was paid in full, no interest. Lampert Lumber Company the same way; Empire Lumber Company was partly paid, the schedule was \$3500. There was \$81.67 interest. The next item here is the Atlas Tie Company, that does not appear under the liabilities and I did not include that. That has been paid. I do not think there was any interest paid on it. John

Carter does not appear any more. That has been paid. (447) A. J. Callis, that appears under the amount of \$126.63. The difference was paid, no interest. The next is A. S. Campbell, that was paid. The next item is D. H. Dollar \$3,091 but that appears as \$8,280.38. We did some business with them after February 1st, quite a number of it wasn't on the books as it ought to have been you will see, some of those logging contractors appear again not on the books. We paid him money in the meantime, I would say about \$10,000 but no interest. The next is Mrs. Dawson, that is included but we do not owe that amount. The next is Hemmingway that appears on the books as \$213.16. The difference was paid between February 1st and July 29th. (448) The next is Hopkins which was paid. The next is Papesch which was also paid and the next item is Thornton that appears on the books as \$6,997.16. I mean I included this amount in the list which you have before you as the liability of July 29th, 1916, as \$6,997.16. The difference had been paid but no interest was paid. The next item is J. C. White, we still owe him that amount. We have paid no interest. Now these items of back salaries, \$3,698.12, they have all been paid. Those names appear again in my statement of July 29th; of course we owed them salary for the month of July.

(Here the witness outlined the names of those employees. (450)

Now the item of the Exchange National Bank,

Coeur d'Alene, has been paid in full and does not appear as a creditor. The St. Joe Boom Company, \$2,286.53, Mrs. Tolerton, \$11,071.60, the difference has been paid there. Voorhees & Canfield, \$1588.3. Chapin Company is paid in full. The American Trust Company has been paid. I want to correct here something, the Exchange National Bank, Coeur d'Alene, was included in July 29th, 1916, to the extent of \$2,032.91 for having time checks in their possession which were unpaid as of July 29th. (451) Now that amount has been paid by the receiver as a preferred claim. The Commercial Printing Company is included, \$140.10. Coeur d'Alene Grain & Milling Company, \$404.16. (Here the witness detailed an itemized list of various small creditors.) (453) (459)

The Witness: From now on always when I mean the schedule, I mean the bankruptcy schedule, and I am going to say from now on the exhibit when I mean the exhibits. I have not included in the exhibits \$8500 which is mentioned in the schedule. The following, I have included in the exhibit which I mentioned. (Here the witness detailed various amounts.) (459) (477)

Q. You haven't given me the notes of the Mechanics Loan & Trust Company.

A. I mentioned them.

Q. To make the \$692,000, you put them in in what amount?

A. \$100,000.

Whereupon an adjournment was taken until February 21st, 1917, at 1:30 P. M.



## CROSS-EXAMINATION RESUMED.

By Mr. Post:

On July 9th, we had an over-balance, Fort Dearborn National Bank, of \$10,588.63, which was the balance according to our books. (464) During the whole month, this is the closing entry up to the 29th of July. On July 28th, there was a balance of \$6,706.09. On July 29th we had in the Exchange National Bank of Spokane, \$584.25, Winona Bank, \$25.79. (465) Now with reference to the liabilities that are mentioned here as not on the books, all those I mentioned—there were some more outside of those I mentioned, smaller bills that came in which were dated before February 1st and which were paid during this time which I can't find any more. Say, for instance, somebody came in in April and said, "Here you owe me some money," and showed a bill for four or five hundred dollars, and I would look this bill over and check (466) it up, and if it was correct—and it was correct, and when I said why wasn't it on the books, it would be forgotten or overlooked or mislaid and according to the system they usually only put things on the books when they were ready to pay them, but there were so many of them I couldn't remember. At these times, I would put them on both sides, the debit side and the credit side when I paid it.

Q. Of \$636,519.35 that were not on the books on February 1st?

A. Those that are entered \$636,519.75 were on the books already with the exception of—no, no ex-



ception; they were all as per the books February 1st and I see in addition to this there were some small bills and other items which were paid and yet the liabilities dated back to February 1st or before of which I could not keep track now any more; some of them have kept an open account all along, like those here, he could find those but others were charged to expense, and it was not an account—it was not an open account and it is impossible for me to get them out unless I must sit down for two months and look over every voucher and check up everything, check up every invoice. (467) It is possible, in my statement of liabilities not on the books February 1st, that I haven't all the items but I am pretty sure that I have not. I put nothing done there that I was not positive about and whenever I paid any, I put them down. Of course, when they were paid, I had to put down the name of the party and give him credit and then charge him with the payment. That must be done where a party has an open account, but where we buy from a man only once here they buy some hay from him for instance, we simply charge it to livery expense, and pay it out in cash without that man's name ever appearing on the books except in the voucher. I couldn't tell you exactly how the \$100,000 was paid out, because you know what I told you at the time but that which does not appear on the list here does not amount to very much. (468)

Q. Now you have just told us a few minutes ago about according to your books, there being a credit

at the Fort Dearborn National Bank of something over \$11,000 on July 29th, and a few hundred dollars at the Exchange Bank in Spokane, and a few dollars at the Winona Bank; are those accounts put in that way in your exhibit 4 in which you put down the assets as of July 29th?

A. No, they appear in this way, all the amounts appear eventually that way; I wish to explain that that schedule—that I made up this exhibit 4, I believe it is from the schedule; the schedule shows exactly the same amount of liability as the books show, but very often in a different form.

Q. I am not asking about the liabilities, I am asking about the assets now?

A. Assets the same way; we have paid out quite—we have paid off quite a number of accounts by giving them checks on the Fort Dearborn National Bank, and those checks were charged to the Fort Dearborn National Bank so that according to our books, at the end of July, there was a balance of about \$10,000 as I told you, then some of those checks came back and the people who had received those checks were added to the creditors of the Stack-Gibbs; consequently they appear in the schedule as one of those creditors and most of which I mentioned to you just before noon, and then you will find the deposit of the Fort Dearborn National Bank was increased accordingly because those checks were not paid.

The Witness:

With reference to the deposits, Exchange National

Bank, \$15,431.09, that is a mistake, it should be \$15,111.98. That overdraft, the Exchange National Bank of Coeur d'Alene was confused with it. The books here show that they were checked with the statements which came from the Exchange National Bank. The Exchange National Bank balance will not correspond with my statement here. The Fort Dearborn National of February 1st, \$14.26 (470) and the First National Bank of Winona \$238.38, the First National Bank of Lincoln \$9,558.26. Those are the only banks that we were doing business with, February 1st except with Coeur d'Alene, but there was an overdraft there. On page 6 of exhibit 4, it says accounts of schedule, that means July 29th, 1916. While in bills receivable of date February 1st, 1916, I put down in the bank as shown on the books of the Stack-Gibbs Lumber Company as of that date when I came to July 29th, 1916, I did not do that. I put down there, deposits Fort Dearborn National Bank \$20,871.45 (471). The balance according to our books was \$10,588.63 and the difference between those two amounts is made up by checks drawn against the Fort Dearborn National Bank, and charged against them which were returned, and the original holders of the checks had been credited for those amounts, not on the books, because we did not care to change the books, but it was done on the schedule. They threw out those checks. I haven't a list of them any more and it does not show on the books but I told you it shows on the schedule. The schedule is made up from

the books and other papers because I made it up from a list of the checks that we got back. I do not think that I have that list now (472) nor have I all of the checks because some of them kept them to make their claims on. I can get the stub check book; I can get it by referring to the statement of the Fort Dearborn National Bank and seeing what checks are outstanding, but I haven't got it here now. I know the checks that were drawn and which were not paid, that is the only way I can check it up if I had the statement here, in fact, I think the statement is of record. (473) I think the statement of the Fort Dearborn National Bank is on record here. I can take the cancelled checks that came back from the Fort Dearborn and compare it with our books (473) and get it that way, but even then I have to go back to the office and get the books — before we made the schedule, we proved every account.

(The witness examining the schedule) This claim does not show it; it shows a different balance, about \$26,000—\$26,690.80. The difference in the two amounts appears. On page 6 of exhibit 4, you will find an account balance of assigned account \$10,511.04, less deductions from customers discount and interest \$2500, leaving \$8,011.04. This shows on the books under contingent bills payable. (474) This \$10,511 is made out of about 250 amounts; we sold invoices to the Exchange National Bank and the Fort Dearborn National Bank, and some other banks, and drew on them for ninety per

cent of the face value of those invoices, and then when the bank collected the entire amount of that invoice they credit us with it, with the rest of the ten per cent of the invoice, less deduction for interest and discount, and deduction which the customers might have made against the invoice, so I had to check out in each special invoice the amount of the invoice, the bank's advance, and the balance due; in this way I got this amount of \$10,511; now in our books you will find in the customers' ledger that each one of those men has an account, and then again I have a bills payable contingent account which is—we are responsible to the bank for this account, even if we sold it to them, and therefore it was a liability. Now the liability between this responsibility of ours and the amount which was advanced to us constitutes the balance which I have mentioned here; I have accumulated it in the schedule but to find it out in the books now means about a week's work. (475) This balance of \$10,511.04 is nearly \$6,000 of the Fort Dearborn National Bank, the rest is made up by the Exchange Bank. The \$2500 I subtract is for deductions. The bank in advancing us the money does not charge us the interest—they charge us the interest and they collect in from our customer because they do not know when they get the money from their customer; they give us \$500 on an invoice and a month from now or two months they collect \$550, and then they figure out the exact amount of the charges and besides we do not know what the customer may de-



duct from this invoice or he takes advantage of the cash discount. We did not consider the freight. This \$2500 is an estimate which has been proven by what actually happened because I only made the statement now and it is past history. Of course I could show what the deductions were if I take the time. The matter is closed insofar as I haven't tried the exact statement of all deductions of either the Fort Dearborn National Bank or the Exchange National Bank. (476) There are a few uncollected items, but pretty nearly I know it will amount to about \$2500. Now with reference to page 5 of exhibit 4, on February 1st, I wrote here only those that are mentioned which are good and collectible. All others on the books were no good; you see I made up this statement with the viewpoint as mentioned by you and Mr. Adams to see how much money was lost or made and for no other reason; I didn't put on the books those that were on the books for a certain purpose but only those that were actually good. No other bills receivable existed February 1st, 1916, have been paid. The other accounts show on my books. They have all been paid with the exception of \$3000, J. F. Cox, that is the \$3000 which is deposited with the Exchange Bank in escrow. (477) Now referring to July 29th with reference to the government timber contract, the \$10,000 I think was paid. On February 1st, I do not know, the Stack-Gibbs had some sort of an arrangement, by which they made a bid and deposited money with the government for a lot



of timber. They have done that frequently, I am sure, but not on February 1st, or between February 1st and up to this time. (478) There was no money on deposit with the government on February 1st. This \$9,932.80, that has been something that has been received since the bankruptcy proceedings were commenced. We kept it on our books as an outstanding account under the name of government timber and under the receivership it was collected. On page 7, the first heading stumpage, timber cut from our land and worked up by us, that was cut between February 1st and July 29th. That quantity of white pine shows on our books in our log book, but I do not think I have it here. It also means again this is an accumulation, I added up from every day from logs brought in which we cut during the period, that is the accumulation of those additions; I have with me here the sheets where I entered it up under the different dates, I believe. I took it from the books and I will produce the sheets from which I took it. I am showing you now the recapitulation of all white pine, yellow pine, (479) showing you the sheet that I figured it on. According to that sheet, there was 2,215,012 feet of white pine, 3,572,760 feet yellow pine, 915,550 feet— The white pine came mostly from a piece of timber along the right-of-way of the Tyson Creek Railway Company. It is land owned by the State, and which the Stack-Gibbs bought. It all came from lands of the Stack-Gibbs Lumber and in order to reach this timber, we had

to build a logging railroad. It was all railroad timber, not on the water, I mean we railroaded it right into the yard. We built the railroad right into the timber and in one instance it was two miles and in another instance it was five miles. (480) The freight on the railroad, the Chicago, Milwaukee & St. Paul, was \$2.15 a thousand and we put it down here at \$4.00 stumpage—we paid \$6.50 a thousand for cutting it and \$2.15 to bring it in, for freight. To go over it again, I figured \$6.50 cost us to log it, \$2.15 for railroading, that is \$8.15; figuring about thirty-five cents for incidentals and overhead expenses, unloading, that is about \$8.50 and \$4.00 for stumpage is \$12.50; now for a concern that has its own stumpage, cuts its own timber and brings it to the mill it shouldn't cost them more than \$12.50 for white pine. (481) I figure that white pine under such circumstances isn't worth more than \$4.00 a thousand. I paid \$6.50 for logging it, that includes the cutting down of the tree to the time, to the point where it is delivered on cars to the main line. Part of this work we did by contract and part of it we did ourselves. The work on the Tyson Creek Railroad was done by contract and that is all included in the contract price; in other words the contractor has to cut down the tree, cut it into logs, bring it to the Tyson Creek Railroad, and load it on the Tyson Creek, with his own engine, deliver it on the main line of the Milwaukee. In order to get part of this white pine, we built the Tyson Creek Railroad, about two miles,

I believe, I do not know exactly any more. (482) That building was started two years ago; they got altogether about thirty or forty million feet of timber and that was just when I came here the last few million feet were cut. As far as I was concerned, I spent nothing on the Tyson Creek Railway, not a cent, because the railroad was kept up by the logging contractors, if anything at all we made money on it because we charged other lumber concerns thirty-five cents a thousand feet for bringing it over the railway. On the Tyson Creek Railroad, the Stack-Gibbs people advanced about \$23,000. The amount of money that the railroad cost then including the upkeep or things there was up to that time. When I came here, there was not more than 2,000,000 feet that belonged to the Stack-Gibbs that could be hauled to that railroad. (484) If I made any kind of a mistake in material matter, it was in relation to the Clarkia Railroad.

Q. Or if you are guilty of any bad judgment about anything, it was in relation to the Clarkia Railroad?

A. All right, without prejudice to later defense, I admit it. Now as to the amount of timber that the Stack-Gibbs people hauled over the Tyson Railway, I cannot tell you the exact figures because I haven't the records here, but my understanding is it was in the neighborhood of thirty or forty million feet, but I believe that (486) Mr. Armstrong can give you almost the exact figures because he had charge of that work. The Tyson Creek Railway

has been sold to a man by the name of William Logan for about \$1000 which I think was \$1000 too much. ( 487) After the timber was cut, the railroad was of no value to us. I wouldn't have sold it in the ordinary course of business we might have got money out of it because maybe there is another fifty million feet of logs will go over that railway and will make it a profitable railway, but the railroad was in an awfully bad state of affairs because the contractor who had charge of it neglected it and it would have cost five or ten thousand dollars to put it in decent shape again and it is up to the parties who want to use it now to do that. In getting my value of \$4.00 stumpage, I did not allow anything for charging off the Tyson Creek Railway. On your theory that if the Tyson Creek Railway costs \$24,000 and it served 24,000,000 feet, then that would cost for every thousand feet of timber sold, \$1.00. (488) As you say, if I start with the value of the white pine logs in the millpond at \$12.50, I just subtract at least \$1.00 to retire the capital account of the logging road, \$6.50 for logs, cost of logging, \$2.15 cost of paying the Milwaukee Railroad, and 35 cents for incidentals but I would not allow \$1.00 a thousand in this instance on that stumpage, for two reasons;—first of all that railroad should never have cost that much money; it is an old track and I have looked into the matter several times and Mr. Armstrong can also testify to that, that that railroad ought never practically cost anything, the Milwau-

kee contributed \$10,000 to that railway, building the bridges, and giving \$10,000 to the cost of that railway and there wasn't only an additional two miles built by us and it should never have cost more than four or five thousand dollars, and that railroad ought to have been a paying proposition instead of an expense, because an enormous amount of timber (489) outside of our own came over this road and he collected 35 cents a thousand for every thousand feet that went over that road, and this is simply a case of mismanagement and negligence; that stumpage there on that part of the town that is easily accessible is any time worth \$4.00 a thousand, if not more. I recommended the sale of the road for \$1000 because it was an unusual circumstance that we were able to get \$1000, the reason is as I told you, the railroad was in very bad shape and would have cost us quite a number of thousands, at one time one party wanted five thousand dollars to put this railroad in shape again and there was a condemnation suit about that railroad and some other lumber companies are anxious to have it and that is the only reason I was able to get that money. (490) I have not subtracted the thirty-five cents a thousand for railroading or hauling on that road. In making up these figures I figured that yellow pine was worth about \$8.00 a thousand in the millpond. I never compiled the figures but I know that it cost more than \$8.00 a thousand even to log the yellow pine because there was a very bad mismanagement there. Since I came here, Mr.



Gibbs himself attended to the logging. The yellow pine was logged at the same time the white pine was. The yellow pine did not come over the Tyson Creek railroad, it came from the Tyson district, but it went over a different road. That was not done by contract, we did that ourselves. The mixed timber, part of it came over the Tyson Creek Railroad and part came from other territory. (492) Now with reference to the Clarkia Railroad, that was about three miles west of Clarkia in Shoshone County, it is about fifty odd miles I think from St. Maries. It is a branch railroad of the Milwaukee going from St. Maries through Fernwood and Clarkia up to Bovill, Elk, River. When I came here, there wasn't any railroad at all and between the time I came here and July 29th, it was built. (496) It is about five miles long and while I could never get the exact figures together it cost us in the neighborhood of \$15,000. I did not get the exact figures together because I didn't take the trouble to do it after bankruptcy proceedings intervened. It appears only on the books under labor performed, because we owed the money, we hadn't paid it out yet, we hadn't paid the laborers yet or the supplies, and instead of charging it on the books simply to the railroad I gave credit to the different people to whom we owed the money without giving the debit account credit for it. As to actual money that we paid out, we paid out very little; the rest of it is debts. So a part of the increase of liabilities is due to this Clarkia Railroad. I would say



that it amounted to about \$15,000. (497) The Stack-Gibbs Lumber Company owns some timber up there, about three-quarters of a section or about 480 acres. That was white pine and mixed. My estimate was that there was about five million feet of white pine there. (498) There was about six or seven million feet of mixed and altogether about twelve million feet. Before I built this railroad, I talked it over with Mr. Coman and Mr. March of the Exchange National Bank. I may have mentioned it to several other creditors but I didn't make it a topic of discussion. I don't remember whether I wrote the Fort Dearborn National Bank or Merrill Cox & Company, I do not remember any more, I think I might have mentioned it to them that we were building a railroad but the correspondence will show that.

Mr. Post: Mr. Adams will you produce the correspondence of Mr. Katz?

Mr. Adams: I think I have it all except one or two letters in the deposition, but they haven't anything to do with the railroad.

The Witness: The actual work was begun on this railroad about the middle of June. It was preliminary work done all along—

Mr. Post: Now Mr. Adams has handed you a couple of files there and I wish you would see if you can find there any letters you have written to the Chicago people bearing on this railroad.

Mr. Adams: I do not want to interrupt but there isn't any letters there about the railroad.

The Witness: I remember after the railroad was almost completed, prior to going to Chicago, I dictated a letter in Mr. Coman's office mentioning that railroad, it was one of those letters of which I did not make a copy for myself or keep one, and I believe the letter was prior to that meeting in Chicago, July 26th. If I wrote to anyone it would be to Merrill Cox & Company because I never wrote the Fort Dearborn anything about the railroad as I remember it—

(Whereupon a short recess was taken upon resumption.)

The Witness: I find one letter in which I mentioned the railroad. It is of date February 22, 1916, addressed to the Fort Dearborn National Bank. That is the letter already introduced, exhibit No. 10. Between February 1st and July 29th I went back to Chicago. (501) I was back in the end of May, and the beginning of June, and the end of July. In May I met some of the creditors among them being Mr. Tilden of the Fort Dearborn National Bank, Mr. Fletcher, Mr. Aaron. I did not see Mr. Searle or Mr. Hess or Mr. Stack or any of those people. I met a representative of the Empire Lumber Company (502). I met no other creditor or representative of any of the creditors that signed the trust deed. I met no one except the persons I have named and the members of the bank in Spokane. I did meet Mrs. Gibbs once. I went back to Chicago to meet a representative of the Empire Lumber Company we had a contract with them and

trouble with them, and they threatened to sue and I settled with them. I went back there for that particular purpose and the meeting of the other gentlemen was only incidental. I went back in June because my mother died and was gone about a week. When I was there, I want to say the first time I was there I did not see Mr. Fletcher or anyone of the Fort Dearborn. ( 503) When I was back in Chicago it is possible that I mentioned to these people the Clarkia Railroad, but I do not remember anything about it. An engineer was sent up there to make a survey of the railroad. His name was Feller, Frank H. Feller. I talked to Mr. Coman, Mr. March and Mr. Green about it.

Q. You went into the matter very carefully to see whether it would be advisable to build a railroad or not?

A. Well, I did to some extent, and to some extent I relied upon what was told me by Mr. Gibbs in regard to the amount of timber on hand, which according to the books was considerably more than was actually found at all.

Q. I believe you said there was five million of white pine and seven million of other timber?

A. Correct.

Q. Did the books show in some way the quantity of white pine?

A. Yes, it showed a quantity of white pine, but it showed fifteen. (505)

In that matter, I relied on what they told me but also on what Mr. Gibbs said in regard to the amount

of timber on hand and to what it was worth according to the books. (506) On page 8 of exhibit 4, the first item is commissary supplies. That does not show in the books it is of record herein in an inventory by the receiver being on hand when the company went into the hands of a receiver, and there is another record here of the appraiser appraising it. These items commissary supplies, dynamite, horses and harness, and kitchen equipment, they were put down what the appraiser of the bankruptcy proceedings appraised them. The logs purchased is not the appraisal of the appraiser but is the price we paid for it. We paid \$8.00 a thousand for the yellow pine just bought shortly before we went into the hands of a receiver and they were still there not used. (508) The appraisers appraised with reference to the commissary supplies. The appraisers appraised only that part of the property which was turned over from the receiver to the trustee. These commissary supplies and dynamite—horses and harness was sold already by the receiver. (509) Going back to stumpage, I didn't put down stumpage at its cost because I didn't know the cost, (514) but I put down the white pine at \$4.00 a thousand the others at the figures stated, as I heretofore told you that I got at it. I explained to you at the time that as to the logs on page 7 that it was the cost of them to us. I told you that they were mostly bought, and I considered the average market price. I paid \$13.00.

Q. Now when you determined the value of your

assets of July 29th—no February 1st—in order to determine what you call reduction in assets, in order to figure the amount of reduction in assets on page 7 you figured those assets at their market value or at least that part of it which is logged at their market value?

A. Yes, that is correct.

Q. But on the last two pages of your exhibit 4, where you undertake to show whether there was any gain or not in the value of the assets you do not put down these increased assets at the market value, but what you call cost, isn't that right? (515)

A. No, that is not the case.

Q. You put down at the top of the last page the statement that you had on hand July 29th, 1916, 1,250,000 feet of lumber more than you had on February 1st, don't you?

A. Yes.

Q. And you say that the average cost price of that lumber is \$18,720?

A. Correct.

Q. But you do not put down here what was the value of that lumber in the mill yard?

A. That is exactly what I put down.

Q. Your record here is cost price?

A. Yes, that is the only way you can put down lumber in the mill yard, because—

Q. You mean to tell this court that you can't figure the value of lumber in the mill yard the same as you can figure the value of logs in the mill pond or the logs on a river before it got to the mill pond, or in the woods along a railroad track?

A. I think I can state that.

Q. But you can't figure it?

A. Yes. I haven't gone into details as to what the lumber that I had on hand July 29th, 1916, assuming that sixty per cent of it was white pine, what are the grades of it, and I can't ascertain that from the books. (516) The lumber has been sold. It was on hand February 1st, 1916, and also before July 29th, but I can't tell the different grades. I can tell on July 29th because nothing was added to it or very little, but February 1st there was constantly added to it and shipped and added and much I know what the original—I do not know exactly but I can look it up in the books. I can give it to you approximately. I should think there was about twelve million feet and we sold about eleven million feet during that period of time. If I would once take the time, I could find from the books the various grades that we sold, (517) and I could tell you what we got for it at the mill yard but I can't tell you the selling price of the lumber at the mill yard. We sold lumber only July 26th, 27th, 28th, and 29th, all grades of lumber and I can tell you what the different grades were. (518) My books will show what the different grades were; white pine and yellow pine, cedar and lath. I can't tell it to you from what books I have here.

Q. I know it isn't fair to figure cost in one place and figure market value in another place. Now at least I think you know the lath you have on hand, that you have on the last page there where you fig-



ured it at \$1.25; is that figured at cost or is that figured at selling price?

A. That is figured at cost.

Q. What was the selling price of it?

A. I don't know offhand. They were different grades. There is white pine and there is yellow pine and there is cedar and larch.

Q. Your books will show what you were selling it for, won't they?

A. They will show.

Whereupon an adjournment was taken till February 26th, 1917. (519)

The Witness: My exhibit No. 4, the last page thereof, shows a statement of lumber on hand February 1st, 1916, of 4,612,000 feet and in February, 1916, I made an inventory of what lumber we had on hand which I am now producing. The papers I am showing you here, I found here all the trial balances between January 1st and June; in those trial balances we accumulated all the figures of the lumber on hand showing how the books stood on the first of each month. (520) The trial balance for February was gotten up by the bookkeeper but I have checked this particular one we were talking about, the February 1st trial balance. I checked it with the books and I have them here, which I now produce. This is the only thing that would show it; I had an inventory taken on the first of each month from the actual lumber; I started this, however, I think the first time in March or April, 1916. The inventory which this trial balance shows

there was taken the following week; on the first of January they took an actual lumber inventory and I had the lumber added to it and the shipments deducted from it and that is the way I got the inventory on the first of February. Later on in the following months when I was here, I had to check every month with the actual lumber and it usually agreed about. (521) I can't find the inventory of January 1st. They were usually given to the sales manager and he made from there his sales sheet, to send out to the salesmen and I can't find them. I never saw the lumber inventory of January, 1916. I was only told that the lumber inventory was on the books, they closed the books at that time. They made no entry on the books to show the amount of lumber on hand. It was kept in loose sheets. What I show you here isn't what I would call an inventory but it was kept up as you will find every month the same way and we have the inventory here—it was taken at the time the appraisers appraised the lumber, and it has to check with that—it did check. I have no other books or records in relation to that except what I hand you. (522) After I came out here it was checked up March 1st, 1916. I am awfully sorry that I haven't any paper that was prepared March 1st, 1916.

Q. Then no bookkeeper could go through the books that you have here in this court room or down at the mill, or anywhere else in this country and determine the quantity of lumber on hand February 1st, 1916?

A. Yes, it can be determined in exactly the manner in which I determined it there.

Q. From the books?

A. From the books.

Q. Well, produce the books, then, from which you can determine.

A. After a long pause.) No, I can't get it any more. It is impossible to get it now because we kept the amount only in dollars and cents. I can't give you anything further because it is impossible to get at it as it is kept only in the amount of dollars and cents.

Q. I will ask you the same question that I asked you before—could any bookkeeper or any accountant determine from the books here in this court house or the books of the Stack-Gibbs Lumber Company in the county, in this county, how much lumber there was on hand on July 29th, 1916, or within a few days either way?

A. No, I do not think they can. (523) We kept a record of the lumber that was manufactured in a book and one for February. I have here a book which hasn't any name but which contains a compilation of logs sawn and lumber derived from sawing the logs in different months. It starts in January, 1915. This heading here is February, 1916. This is a compilation and is compiled from a different book which I am (524) going to show you now. This book is called the log scale report book, shows every day as the logs went up the chain, the number of feet of each log as it was measured, that had to be added

every day. That is a book of original entry and it was taken by the log scaler in the mill. He writes it right down into this book. He makes his sheets and those sheets are afterwards put right in here. He does that of each log. (525) This books shows the scale of the log but it does not show the cut of the mill. The cut of the mill exceeds the scale of the log about twenty-eight per cent. I have the cut of the mill. I have every day the amount of lumber sawed, that was given on a little slip, that is a different scaler again, that is a lumber scaler, and those slips were each day entered in here. It compares—here is the logs sawn in February and here is the lumber sawn, and shows the overrun. The overrun in February happened to be 26.9 per cent; this was added to the old inventory and the shipments deducted. I have here a book that shows the lumber of each month. However, the lumber inventory was taken on typewritten sheets and the salesmen got them each month, and that is the last we saw of them. (527) I figured to put in here according to the log measure. The log scale here, 1,312,080 feet, that is of white pine. This book shows there was an overrun of about twenty-seven per cent more than the log scale and so figuring on mill run, I think that the cost of logs was less than fourteen dollars, that would be about ten dollars; \$14.00 white pine, \$8.50 yellow pine and \$8.00 mixed, that was the way they charged long before I came and we kept it up.

Q. And the overrun for February, according to your books was 26.9 per cent?

A. Correct. (529) For April, the overrun was 34.7, April, 1916, and in May we charged the log account at the same rate. In June, 1916, it was charged back at the same rate, but it was not figured out here. I can show you on the log account; I can figure it out at the same rate. The book does not show the overrun there. It has not been figured out on that page. (530) In July, they were charged at the same rate. I can figure out what the overrun was, it was about the same. There is no way of determining the quantity of lumber on hand February 1st, 1916, except as I told you by adding what was sawed and deducting what was shipped, that is how we did it. Going back to January 1st, I mean—January 1st does not show on the books though. It only showed on the stock sheet which we had on hand at that time, but which we haven't any more. There is no way of checking it up. As to where I got the figures 4,612,000 at that time I got it through the stock sheets which I had on hand. I got it from those trial balances which I know were correct at the time. (531) Now in making up my figures for lumber on hand, July 29th, 1916, in Exhibit 4, I got the figures 5,864,000 in the same way, I had there June 1st; I added to it the lumber sawed during July and deducted from there the shipment and it was started at that time and we had besides an inventory at that time and had it checked up. I haven't that inventory now, it is not in existence any more. After the petition in bankruptcy was filed an inventory was taken of this lumber. It was taken



by Mr. Nelson, the one party that always did it under my direction. I was the receiver in bankruptcy. (532) I think it was filed.

(The referee here hands the inventory to Mr. Post.)

The Witness: That is the inventory we filed at that time. It was inventoried at something less than 5,864,000. It says here 5,611,000. I got the figures 5,864,000 from the lumber which I shipped as receiver and which the trustee shipped and added those two together; I remember at that time the actual inventory was about two hundred or two hundred and fifty thousand feet higher than I put it in as receiver, however, I wanted to be quite sure there wasn't any mistake about the lumber being on hand and I struck off a few hundred thousand feet. (533) I wanted to be dead sure about it that I wouldn't be charged afterwards there was more lumber and what happened to it; I know the lumber was there all right and came out a few hundred thousand feet more, but I struck off a few hundred thousand feet to be correct. I shipped as receiver 2,884,000 feet of lumber and 889,000 pieces of lath in accordance with my final report. But of this amount there was not on hand on the first of August, that is I sawed yet some logs during the receivership, the amount of 716,000 feet of lumber, 141,000 pieces of lath; the trustee shipped then the remaining lumber. The trustee did not manufacture any from the logs. The mill was then shut down a few days afterwards; the trustee shipped 3,587,000 feet, and to this the mold-



ing has to be added, 3,687,000 feet. I get this from the books of the trustee. (534) Now of the lumber on hand July 29th and February 1st, 1916, as to what part was white pine and how much yellow pine and how much mixed, I can not tell you any more. I can tell you, though, I know about what you want, I can tell you what we got for our lumber during this period, the sales price. As to the value of the lumber on hand February 1st, 1916, I haven't really given this matter much attention (535) I can give you an average price. On February 1st, there was lumber on hand 4,612,000 feet, but I can not give you the proportion of white pine and I know no way of getting at it. The white pine was worth more than the western pine. I do not know the market price of lumber at that time. I would think it was five or six dollars more a thousand than the western pine and western pine (536) —about \$2 a thousand more than the mixed. I will give you an estimate as to what I would regard the proportionate amount of July 29th 2,954,000 feet of white pine, 2,015,000 yellow pine and 526,000 feet of mixed. In order to get the market value of the lumber on hand February 1st, 1916, we must approximately know how much white pine and how much yellow pine and how much mixed there was and to know the different grades as well. As to the different grades, they keep their stock in the right proportion and are not forced to ship out certain stock and have only the bad ones left, they can tell pretty well; but with our stock I think it was almost

impossible to put the same measure on as the stock of a good going concern—as to how much we sold between February 1st and July 29th, I can tell every month exactly what we shipped of each species, I mean white pine, yellow pine and mixed and can give you the amount each month. (538)

Witness states that the value of the different grades of lumber was higher in July, 1916, than February, 1916. “In making up the figures, Exhibit 4, although I made a figure to show what I call the grain in lumber, I did not figure on the value of the lumber as of February 1, 1916. I did not figure the sales value at all. I figured what we considered the average cost price of our lumber. I did not know and do not know what proportion of the figures in that exhibit of 4,612,000 feet as of February 1, 1916, was white pine. The cost price of white pine is different than the cost of yellow pine and mixed. In figuring cost price, I did not figure white pine stumpage at \$4.00. I did not go into details. I figured on what we called average cost price. The value of stumpage for yellow pine is about \$1.00 a thousand, while for white pine it is about \$4.00 a thousand. We never went into details as to how much of the lumber was white pine or how much was yellow pine or how much was mixed.”

Q. You just took a running jump at it?

A. That is about what we did.

Q. But in order to get at the average cost price, you have got to get the quantity of each kind of lumber, haven't you?

A. Well, in order to figure out exactly what the lumber really did cost, you have got to go into all those details like you have just mentioned.

Q. You take five million feet, for instance; if four million of it is white pine and one million of it is yellow pine, the average cost price would be different than if three million of it was white pine and two million yellow pine?

A. Certainly, Mr. Post.

Q. In determining this average cost price, did you figure that a certain proportion of it was white pine and a certain proportion of it was yellow pine and a certain proportion of it was something else?

A. I didn't, because I couldn't tell any more. I didn't have the figures any more than you have now.

Witness states that he cannot tell the value of the lumber on hand on July 29th, 1916, but that he has some reports from which he can tell their average sales price of all the lumber without regard to quality; that in February, 1916, the average sale prices were as follows:

White pine .....	\$18.26
Yellow pine .....	12.21
Mixed .....	11.26

In March, 1916, as follows:

White pine .....	\$19.00
Yellow pine .....	14.51
Mixed .....	11.95

In April, 1916, as follows:

White pine .....	\$18.45
Yellow pine .....	12.88
Mixed .....	10.32

In May, 1916, as follows:

White pine .....	\$19.07
Yellow pine .....	17.10
Mixed .....	13.51

In June, 1916, as follows:

White pine .....	\$19.47
Yellow pine .....	16.10
Mixed .....	13.36

In July, 1916, as follows:

White pine .....	\$19.16
Yellow pine .....	15.31
Mixed .....	13.60

Witness says in this same compilation that he has a memorandum of the average of sales prices from January 1st to July 1st, 1916, and the same for white pine was \$18.03.

Q. What was the market price of white pine as it stood on the yard, of the different grades that were there on July 29, 1916.

A. I have never made an estimate according to that. I never figure out according to the grades or anything else. I couldn't tell you. Impossible to tell you without naming the grades.

Q. But if when you compare, if you were trying to get at and making up the schedule, Exhibit 4, the difference in the market value of the lumber at Gibbs, Idaho, as it was on February 1, 1916, and the value of the lumber as it stood at Gibbs, Idaho, on July 29, 1916, you would get up an entirely different set of figures than you did get up in Exhibit 4?

A. Yes, I certainly would go at it differently.

Q. And if you were undertaking to get the market value of the lumber as it stood at those two different dates, you would have to have the quantities of white pine and other classes of lumber as of each date, would you not?

A. Yes, sir.

Q. If it was less, if the percentage of white pine on February 1st was less than it was on July 29th, then it wouldn't be fair, would it, Mr. Katz, to subtract the two items and then determine the value on the difference? You couldn't do it that way, could you?

A. As a matter of mathematical calculation, not very well, unless you simply assumed an average.

Q. No, not an average. I say if the percentage as to white pine was different on February 1st than it was on July 29th, you couldn't do it this way, by subtraction?

A. No, sir.

Mr. Post: Now at this time before we go any further, I am going to move to strike out Exhibit 4 for the reason that it does not show anything on the subject of loss and gain from which the court can draw any inference. When they offered it in evidence, they offered it as a compilation made by this witness, stating what it showed could be discovered by an examination of the books. Now, take page 7 of this exhibit. It is headed "Reduction in Assets Between February 1st and July 29th." Go down to the word "logs" and bear in mind it says

that on February 1st they had on the banks of the river certain logs and they put in the value as market price less cost of delivery. He is charging himself with these logs at market price, putting in white pine logs at \$13.00 a thousand, yellow pine at \$8.00, mixed timber at \$7.00. He is charging himself with the market price of these logs in order to make the value as of February 1, 1916. Now turn to the next to the last page of the exhibit, which covers "Addition to Assets Between February 1st and July 29th" and turn to the last page, and they say the lumber on hand is so many feet on February 1st, and so many feet on July 29th, the difference so much, and then he figures that difference at *cost* and says the total gain is \$18,000. He has total loss at \$80,000 and figures the loss on the logs at market price but does not figure the gain at market price or market value, but figures that on another basis which he calls *cost*. Now, of course, that is mere juggling with figures. That is not fair or attempting to be fair. It is clear that if we are going to figure the gain, you must take the lumber that was on hand February 1st and figure the market value of that lumber. If there was some lumber on hand July 29th, he must figure the market value of that lumber as of that date. On one side he calls it market value as to reduced assets, but as to the increased assets it is not market value, it is *cost*, which is conceded to be below market value. Not only that, but it is conceded that these figures that they have here cannot be gotten from the books. There is no way



of checking it up. No bookkeeper, no accountant, can come here and find out about it. It seems to me I have cross-examined this witness enough to show this Exhibit 4 is materially incorrect and should be stricken for that reason, and also should be stricken because you can't find out anything about it from the books, and when you cannot, he cannot go and make an exhibit and put it in here as a compilation of figures that we cannot check up.

The Referee: I am inclined to think that notwithstanding the fact that the witness testifies he was unable to glean this information—that is, a considerable portion of it—from the books, and is testifying quite exhaustively on the means at his command whereby he made the compilation known as Exhibit 4, and notwithstanding the fact that the witness is somewhat vague as to many of the items contained in the exhibit, yet, taking that in connection with his other testimony with reference to the method under which he proceeded, I am inclined to believe that Exhibit 4 is competent, relevant and material. My opinion is that it is not entitled to a very considerable weight; that is by reason of the fact that the witness testified, as far as I am able to glean from what he said in certain responses, it is made up of facts, the results of which are stated from what I intimated a moment ago, either the opinion or the best judgment of the witness. He testified also from other sources that he states are not in existence; as Mr. Post suggested, they are not here for cross-examination, and I am inclined to

think Exhibit 4 is not entitled to great weight as evidence, but I shall permit it to stand for what it is worth.

Mr. Post: Exception.

Whereupon an adjournment was taken until February 27th, 1917.

Resumption of

#### CROSS-EXAMINATION.

By Mr. Post: (566)

The Witness: Page 8 of Exhibit 4, logs purchased and owned there, 807,600 feet of yellow pine, those figures can be located in the book of the Stack-Gibbs Lumber Company. In the trial balance of February, 1916, I have a figure for the average selling price for the month of January, \$17.28, January, 1916. These trial balances are all the same (566). The trial balance for the month of February shows \$15.46 and for the month of July about \$18.00.

Mr. Adams, on page 8 of Exhibit 4 it says, "Logs purchased and on hand 807,600 feet of yellow pine at \$8.00 a thousand, \$646.08." During the recess, in going over these figures I find that the stenographer made the mistake and instead of the figures given, it should be 80,760 feet of yellow pine and we ask leave to amend page 8 of Exhibit No. 4 by changing the figures 807,600 to 80,760 feet.

The Referee: I grant you leave to amend the exhibit. It will be amended as suggested. (592)

The Witness: From February 1, 1916, to July 29, 1916, there was no difference in the situation so

far as my agency or relationship was concerned to anybody between the Dryad Lumber Company and the Stack-Gibbs Lumber Company; that is to say, without discussing whether I was agent for anybody or not. My position as to one company was the same as my position as to the other company. I also made an investigation and got up some papers on the subject as to whether there was any gain or loss between February 1st, and July 29th, as to the Dryad Lumber Company.

Q. And you prepared a document showing that the company made a profit, whatever it was, of \$18,000 as to the Dryad Lumber Company?

Mr. Adams: Objection.

Referee: Overruled.

Mr. Adams: Exception.

A. Yes, sir. There was an old arrangement between the two companies whereby the Dryad sawed the logs. I haven't here the books of the Dryad Lumber Company.

Q. Now we digressed here. Taking up the other company, the Dryad, have you got the records of the Dryad showing how you got at the total gain of \$18,489.17?

A. I have everything here, yes, sir.

Q. That is the figure, without putting it in the record?

A. Yes. I arrived at those figures as shown there. When the logs got into the mill pond they were manufactured by the Dryad Lumber Company into lumber. The work that was done from the time the logs came in to the loading of the cars of the logs

and lumber was done by the Dryad. There was no written contract between the two companies. The Stack-Gibbs Lumber Company gave the Dryad Lumber Company \$3.00 a thousand for sawing the logs into lumber, \$2.00 a thousand for planing such as was planed and loading it into the cars; if it was not planed, \$1.00 a thousand for loading; if it went through the drykiln, \$1.00 a thousand. Between February 1st and July 29th the Dryad handled about 18,000,000 feet of lumber. The Dryad did practically no other business except doing this work for the Stack-Gibbs.

Mr. Adams: If the court please, I desire to offer in evidence that portion of the appraisement made under the direction of this court in compliance with the bankruptcy act which refers to the lumber as shown by the appraisement.

Mr. Post: I object to it as incompetent, irrelevant and immaterial and inadmissible for the purpose of proving the value of lumber in this proceeding. (615)

Witness excused.

The Referee: I will sustain the objection, Mr. Adams, to your offer, for the reason that the controversy here involves the quantity and value of the property between the 1st day of February, 1916, and the 29th day of July, 1916, and that the instrument that is here offered relates to the quantity and value of the timber at a date subsequent to the date July 29th, 1916; I do not believe it is competent.

Mr. Adams: We take an exception.

C. O. Sowder, a witness called on behalf of the

petitioner, the Mechanics Loan & Trust Company and the Exchange National Bank of Spokane, and after being duly sworn, testified as follows:

TESTIMONY OF C. O. SOWDER.

DIRECT EXAMINATION

By Mr. Post:

The Witness: My name is C. O. Sowder. I am the cashier of the First Exchange National Bank of Coeur d'Alene. There is no other bank in Coeur d'Alene that has the name Exchange connected with it. I was cashier on February 1, 1916. That bank has an account with the Stack-Gibbs Lumber Company at that time. I have here a sheet of the ledger showing the account of the Stack-Gibbs Lumber Company on that date. This is the original ledger sheet as we use the loose leaf ledger system. (619) The ledger here shows that on February 1, 1916, that there was no overdraft in that account as on February 1, 1916, the Stack-Gibbs Lumber Company had a credit balance of \$444.69. This sheet covers January 3, 1916, to March 17, 1916, and at no time during that period did they have an overdraft of \$15,000 or as much as \$15,000. On January 28th, there appears an overdraft of \$563.42, which was the only overdraft from the week prior to February 1st and for two weeks after February 1st they did not have an overdraft. In January, they were overdrawn three times, January 1st, \$1008.69 (620), January 10th, \$101.30; January 11th, \$7.80. These are the only overdrafts in January and there were no overdrafts in February.



## CROSS-EXAMINATION.

By Mr. Adams:

The Witness: I am testifying only from the ledger sheet here, only from the books of the bank and not the books of the Stack-Gibbs Lumber Company. Of course, you can check without which showed on their books to be an overdraft. We would not have it until the check reached us for payment. (621) Checks are often in transit for several days before they reach the bank and if the deposits are made in sufficient time to meet them before the checks show up there is no overdraft. (622) The total checks on February 1st, \$4,234.52, and the deposits were \$4,600.85. That deposit may have been a check on the Exchange National Bank of Spokane. I do not know positively, but I can find out from the records of the bank, of course. On the second day of February the amount of withdrawals were \$3,388.53 with a deposit of \$3500. (623) I do not know where that deposit came from. Usually the checks that we pay, drawn on this account had been issued several days from the date the check bore, about a week, I would say. The amount of withdrawals from February 3rd to February 9th amounted to \$12,127.88 (624). It is quite true that while our books might show a balance, the books of the Stack-Gibbs Lumber Company might show an overdraft.

## REDIRECT EXAMINATION.

By Mr. Post:

The Witness: The total deposits from February 3rd to February 9th, inclusive, were \$12,858.00.

Witness excused. (625)



(After the witness was excused, he was recalled from the bank and the following testimony was given.)

RE-CROSS EXAMINATION.

By Mr. Adams:

The Witness: The deposits that you mentioned, was the records show that it was a check drawn on the Exchange National Bank of Spokane. (626) I did not know anything about the Stack-Gibbs Lumber Company having any other checks out on February 1st. I had no knowledge of the books of the Stack-Gibbs Lumber Company. I did not know anything about what checks they had out. (627) In the bank we understood that the Stack-Gibbs Lumber Company were overdrawn at different times above the bank balance. I do not recollect who it was who told us that they were issuing checks in excess of their balance. (629)

Mr. Post: I offer in evidence Exhibit No. 52 and Exhibit No. 53.

These pieces of paper I got from the secretary of the Western Pine Manufacturers Association, and the witness, the secretary, left for Portland last night. They purport to show for the month of January, 1916, the average selling price of white pine in this general territory, and the same thing as to July, 1916. Perhaps I had better state in case they get lost something about these exhibits. Exhibit 52, being the January statement, concludes with the words, "average selling price, \$19.20," and Exhibit 53, which is the July statement, concludes with the

words, "average selling price, \$19.72;" that is Idaho white pine. I have had marked for identification two statements obtained from the same source for western pine; one is for January and concludes with the words, "average selling price, \$14.76;" this is Exhibit 54, and the other is for July, 1916, and concludes with the words, "average selling price, \$16.35," and this is Exhibit 55. I have two other statements obtained from the same source which I have marked for identification "Exhibits 56 and 57," 56 being for January, covering first, fir and larch,, and the statement is, "the average selling price is \$10.39; covering spruce, with the statement that the average selling price is \$11.31; and white fir, and the statement is, "the average selling price is \$12.98; and cedar, with the statement that the average selling price is \$10.63. The July statement, being Exhibit 56, says that as to fir and larch, the average selling price is \$12.39; spruce, \$16.75; white fir, \$14.20; cedar, \$12.36.

There being no objection, they were admitted.  
(632)

Mr. Post: I offer in evidence Exhibits No. 54, No. 55, No. 56 and No. 57.

Said exhibits were admitted without objection.  
(633)

Mr. Adams: I offer in evidence Exhibits 6 and 7, being the two notes for \$10,000 and \$5,000 held by the Exchange National Bank.

The Referee: They will be admitted.

Mr. Post: Exception.

The same being two notes, one for \$5,000 and being note No. 27,075 made by the Stack-Gibbs Lumber Company, dated December 31st, 1915, bearing the cancellation stamp of the Exchange National Bank, dated February 14th, 1916, bearing revenue stamps cancelled thereon on December 31, 1915; and a note for \$10,000, dated December 30, 1915, payable to the order of the Exchange National Bank, signed C. D. Gibbs and endorsed by the Stack-Gibbs Lumber Company, bearing the cancellation stamp of the Exchange National Bank of date February 14th, 1916, and having a revenue stamp thereon, cancelled December 30, 1915.

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*In the District Court of the United States for the  
District of Idaho, Northern Division.*

IN THE MATTER OF STACK-GIBBS LUMBER  
COMPANY, Bankrupt.

In the matter of the consolidated claims of the Mechanics Loan & Trust Company and The Exchange National Bank of Spokane.

Now, on this 8th day of December, 1917, the above cause coming on for hearing on the application of the respective parties hereto to settle the Bill of Exceptions herein, Merrill, Cox & Company appearing by its counsel, Harry L. Cohn, Esq.; Minnie A. Gibbs and I. F. Searle appearing by their counsel, H. W. Canfield, Esq., and the Mechanics Loan & Trust Company and the Exchange National Bank of Spokane, appearing by its counsel, Frank T. Post, Esq., and at it appearing that the proposed bill of excep-

tions and proposed amendments thereto were both served within the time limited by law and that the time for settling said bill of exceptions has not expired and the Court having duly allowed said proposed bill of exceptions and amendments thereto; and it further appearing to the Court that said bill of exceptions contains all of the material facts occurring in the trial of said cause, together with the exceptions thereto.

Therefore, on motion of Harry L. Cohn, one of said counsel,

It is hereby ordered that said Bill of Exceptions and the amendments allowed by this Court be, and the same is hereby settled as a true bill of exceptions in said cause and that the same is hereby certified accordingly by the undersigned Judge of this Court who presided at the trial of said cause, that it conforms to the truth and that it is in proper form and that it is a full, true and correct bill of exceptions and the Clerk of this Court is hereby ordered to file same as a record and transmit same to the Honorable Circuit Court of Appeals for the Ninth Circuit.

FRANK S. DIETRICH,

Judge.

(Endorsed): Filed Dec. 26, 1917. W. D. McReynolds, Clerk.

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(Title of Court and Cause.)

PETITION AND ORDER ALLOWING APPEAL.

Comes now, W. A. Armstrong, the duly appointed,

qualified and acting Trustee in Bankruptcy herein, and Merrill, Cox & Company, Minnie A. Gibbs and I. F. Searle, feeling itself aggrieved by that certain Order made and entered herein on the 6th day of August, 1917, wherein the Report and Order of the Referee in Bankruptcy was confirmed, which said Referee's Order and Report was of date May 28th, 1917, and wherein it was ordered that a certain claim and amended claim of the Mechanics Loan & Trust Company be allowed and the Petition of the Exchange National Bank of Spokane, Washington, be granted and that the said Mechanics Loan & Trust Company be paid all dividends or monies that might thereafter be determined by the court to be due and payable to Merrill, Cox & Company, Fort Dearborn National Bank, I. F. Searle, First National Bank of Lincoln, Nebraska; Exchange National Bank of Spokane, Washington; Shoshone Lumber Company, Idaho Timber Company, S. H. Hess, J. K. Stack, Genevieve H. Tolerton and Minnie A. Gibbs until the said Mechanics Loan & Trust Company should have been paid the sum of \$101,162.91, does hereby appeal from said order and judgments and from the whole and every part of each of said judgments and orders, and from the various and several orders entered in said cause prior to said final order of judgment, materially affecting the rights of the said W. A. Armstrong, Trustee in Bankruptcy, Merrill, Cox & Company, I. F. Searle and Minnie A. Gibbs, to the Circuit Court of Appeals of the United

States for the Ninth Circuit, for the reasons and upon the ground set forth in the assignment of errors which is filed herein and prays that this petition for said appeal may be allowed and that a transcript of the record, proceedings and papers upon which said final Order and Decree were made, duly authenticated be sent to the United States Circuit Court of Appeals for the Ninth Circuit. Your petitioners further pray that an order be made fixing the amount of security to be given and furnished for said appeal.

ROBERT WEINSTEIN,

Attorney for W. A. Armstrong,  
Trustee in Bankruptcy.

ELMER H. ADAMS,

HARRY L. COHN,

ADAMS, CREWS, BOBB & WESTCOTT,

Attorneys for Merrill, Cox & Company.

REESE H. VOORHEES and

H. W. CANFIELD,

Attorneys for I. F. Searle and Minnie A. Gibbs.

The foregoing petition for appeal is granted and an appeal is allowed (excepting as to the Trustee in Bankruptcy), and the amount of the bond upon which said appeal is hereby fixed at the sum of \$200.00 which bond when executed conditioned as provided by law and the rules of the Circuit Court of Appeals shall be a cost bond.

August 9th, 1917.

F. S. DIETRICH, Judge.



Due service of the within Petition and order acknowledged and a true copy received this 7th day of August, 1917.

POST, RUSSELL, CAREY & HIGGINS,  
Attorneys for Mechanics Loan & Trust Company  
and Exchange National Bank of Spokane, Wash-  
ington.

(Endorsed): Filed August 9th, 1917. W. D.  
McReynolds, Clerk.

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(Title of Court and Cause.)

BOND.

KNOW ALL MEN BY THESE PRESENTS that Merrill, Cox & Company, I. F. Searle and Minnie A. Gibbs as principals and the National Surety Company, a corporation as surety, acknowledge themselves to be jointly and severally held and firmly bound unto the Stack-Gibbs Lumber Company, the above named bankrupt, and to the Mechanics Loan & Trust Company, a corporation, and the Exchange National Bank of Spokane, in the full, just sum of \$200.00, lawful money of the United States, for the payment of which, well and truly to be made the said principals and the said surety bind themselves, their successors and assigns jointly and severally, firmly by these presents.

Dated this 9th day of August, 1917.

The condition of the foregoing obligation is such that whereas the above entitled Court in the above entitled cause, entered and rendered on the 6th day

of August, 1917, a final judgment and order in favor of the contention of the Mechanics Loan & Trust Company and the Exchange National Bank of Spokane wherein it sustains the allowance of the claim of the said Mechanics Loan & Trust Company and the petition and claim of the Exchange National Bank of Spokane and confirmed the report and order of the Referee in Bankruptcy entered on the 28th day of May, 1917, and whereas the above named principals, feeling themselves aggrieved by the said judgments and various orders entered in said cause prior to said final orders and decrees and said orders to the United States Circuit Court of Appeals for the Ninth Circuit, and whereas the Court has allowed said appeal and fixed a bond in the sum of \$200.00.

NOW, THEREFORE, to protect the said appeal and in compliance with the order allowing the same, this obligation is given and if the said principals and appellants shall prosecute its said appeal to effect, and answer all damages and costs, if it shall fail to make good its appeal, then the above obligation shall be void, otherwise to remain in full force and virtue.

MERRILL, COX & COMPANY,

By Harry L. Cohn, its Attorney.

I. F. SEARLE and

MINNIE A. GIBBS,

By H. W. Canfield, their Attorney.

NATIONAL SURETY COMPANY,

By L. W. Ensign, its Attorney in Fact.

(Corporate Seal.)

The foregoing bond is hereby approved as to form, amount, and sufficiency of the sureties.

FRANK S. DIETRICH, Judge.

Received copy of the within this 7th day of August, 1917.

POST, RUSSELL, CAREY & HIGGINS,  
Attorneys for Mechanics Loan & Trust Co., and the  
Exchange National Bank of Spokane, Wash-  
ington.

(Endorsed): Filed Aug. 9, 1917. W. D. McReynolds, Clerk.

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(Title of Court and Cause.)

ASSIGNMENTS OF ERROR.

Comes now W. A. Armstrong, the duly appointed, qualified and acting Trustee in Bankruptcy herein, and Merrill, Cox & Company, I. F. Searle and Minnie A. Gibbs and in connection with their petition on appeal herein from the final order or decree entered in the above entitled action on August 6th, 1917, and from all other orders in said proceedings effecting the substantial rights of the said W. A. Armstrong, Trustee in Bankruptcy, as aforesaid, Merrill, Cox & Company, I. F. Searle and Minnie A. Gibbs and as assignments of error upon which it will rely upon the prosecution of their appeal says that in said record and proceedings there is manifest error in this to-wit:

I.

The District Court of the United States for the District of Idaho, Northern Division, erred in hold-

ing that the Referee in Bankruptcy herein had jurisdiction to pass upon the claim of a preference or lien by the Mechanics Loan & Trust Company and by the Exchange National Bank of Spokane, Washington, or by either of them, to the dividends due or which should be found to be due and declared to the said Merrill, Cox & Company, I. F. Searle, Minnie A. Gibbs and other creditors of said estate, or to determine any rights whatsoever to the dividends to be declared herein as between the said Mechanics Loan & Trust Company or the said Exchange National Bank of Spokane, Washington, or either of them and the said creditors of said estate.

## II.

The said Court erred in not sustaining the objections to these petitioners and other creditors to the testimony of E. T. Coman as to conversations had between himself and John Fletcher, S. H. Hess, E. D. Carpenter, Bob Wetmore, I. F. Searle, C. D. Gibbs and H. J. Aaron or any of them and not sustaining the objection of these petitioners and other creditors to the admission in evidence of any conversations had by and between the said E. T. Coman and either of said persons, or in the presence of said persons, to what was said about what should constitute 90 per cent of the creditors of said bankrupt; and in not sustaining the objection of these petitioners and other creditors to the admission in evidence of any conversations had by and between the said E. T. Coman and either of said persons, or in the presence of said persons, relative to what was

said about when said contract should take effect; and in not sustaining the objection of these petitioners and other creditors to the admission in evidence of any conversations had by and between said E. T. Coman and either of said persons, or in the presence of said persons, relative to what was said about what should be done under said contract; and in not sustaining the objection of these petitioners and other creditors to the admission in evidence of any conversations had by and between the said E. T. Coman and either of said persons, or in the presence of either of said persons, relative to what was said about Siegmund Katz coming to Spokane, Washington, or Gibbs, Idaho; and in not sustaining the objection of these petitioners and other creditors to the admission in evidence of any conversations had by and between the said E. T. Coman and either of said persons, or in the presence of either of said persons, relative to what was said about what the said Siegmund Katz should do and relative to what was said about the financial condition of the Mechanics Loan & Trust Company and relative to what was said about the Exchange National Bank of Spokane, Washington, advancing any money or funds.

II-a.

That the Court erred in not sustaining the objection of these petitioners and other creditors to the testimony of E. T. Coman as to conversations had between himself and John Fletcher, S. H. Hess, E. D. Carpenter, Bob Wetmore, I. F. Searle, C. D.

Gibbs and H. J. Aaron, and in admitting parole evidence of said E. T. Coman in substance as follows:

“Mr. Gibbs submitted a statement of his assets and liabilities at Minneapolis and a copy of that statement was furnished not only to us but to all of the other creditors there, and the way we figured it out was that when we submitted it to Mrs. Tolerton that completed the necessary signatures by them or the 90%.”

#### II-b.

That the Court erred in not sustaining the objection of these petitioners and other creditors to the testimony of E. T. Coman as to conversations had between himself and John Fletcher, S. H. Hess, E. D. Carpenter, Bob Wetmore, I. F. Searle, C. D. Gibbs and H. J. Aaron, and in admitting parole evidence of said E. T. Coman in substance as follows:

That it was talked of, understood and agreed that the Mechanics Loan & Trust Company was not able to advance the money and comply with the provisions of said contract as to such advancements, and that the Exchange National Bank of Spokane, would make said advancements and furnish said money.

#### III.

The said court erred in not holding that the said referee based his decision upon incompetent testimony.

#### IV.

The said Court erred in refusing to sustain the objections made by these petitioners to the claim of the Mechanics Loan & Trust Company.



V.

The said Court erred in refusing to sustain the objections of these petitioners to the filing and allowance of the claim and petition of the Exchange National Bank of Spokane, Washington.

VI.

The said Court erred in allowing the claim of the Mechanics Loan & Trust Company in the sum of \$101,162.91 or in allowing the said claim for any sum.

VII.

The said Court erred in not sustaining the objection of these petitioners that the Referee was in error in finding that the evidence disclosed that the sum of \$639,940.56 was considered by the signers of said trust agreement to be at least 90 per cent of the indebtedness of said bankrupt at the time of signing said trust agreement and that when Genevieve H. Tolerton signed then that 90 per cent of said indebtedness of said bankrupt would have signed.

IX.

The said Court erred in refusing to hold that the Referee committed error in finding that Siegmund Katz was not only to become a stockholder and an officer of the Stack-Gibbs Lumber Company but was also to represent the Mechanics Loan & Trust Company.

X.

The said Court erred in holding that the Mechanics Loan & Trust Company took possession of the property of the Stack-Gibbs Lumber Company by

and through the said Siegmund Katz as its representative and erred in not holding that the Referee committed error in such finding.

#### XI.

The Court erred in holding that insofar as the signers of the trust agreement were concerned Section 3170 of the Idaho Revised Code as to change of possession was complied with by the said Mechanics Loan & Trust Company and by refusing to hold that the Referee committed error in such findings.

#### XII.

The Court erred in holding, ordering and adjudging that the said Mechanics Loan & Trust Company be paid all dividends or moneys that might thereafter be determined by the court to be due and payable to the following persons or corporations signing said trust agreement, to-wit, Merrill, Cox & Company, Fort Dearborn National Bank, I. F. Searle, First National Bank of Lincoln, Nebraska; Exchange National Bank of Spokane, Washington; Shoshone Lumber Company, Idaho Timber Company, J. K. Stack, Genevieve H. Tolerton and Minnie A. Gibbs until the full amount of \$101,162.91 was paid and in ordering and adjudging that said sum be declared to be a first lien upon the dividend of the said respective parties and erred in not holding that the Referee committed error in such finding.

#### XIII.

The Court erred in granting the petition of the Exchange National Bank of Spokane, Washington,

with the modification that all sums thereafter found to be due and payable to the Mechanics Loan & Trust Company should be paid jointly with the said Exchange National Bank of Spokane, Washington, and erred in not holding that the Referee committed error in such finding.

#### XIV.

The Court erred in finding that the evidence discloses that it was understood by the signers of the trust agreement that the Mechanics Loan & Trust Company possessed but small capital but that the Exchange National Bank of Spokane would advance whatever money was necessary to the proper execution of the trust not to exceed the sum of \$100,000.00 and in finding that the said bank did this to the extent of said sum and erred in refusing to hold that the Referee committed error in this finding.

#### XV.

The said Court erred in allowing the said claim of the said Mechanics Loan & Trust Company for the reason that the said Mechanics Loan & Trust Company is and was not the owner of the notes mentioned in said claim and the evidence shows that it has and had no claim whatsoever against the bankrupt and the Court erred in not holding that the Referee erred in allowing said claim for said reasons.

#### XVI.

The Court erred in allowing the claim of the said Mechanics Loan & Trust Company for the reason that the said Mechanics Loan & Trust Company did

not loan, advance or furnish to the above named bankrupt any sum of money whatsoever and erred in not holding that the Referee committed error in his finding in this respect.

#### XVII.

The Court erred in allowing and ruling that the alleged contract, a copy of which was attached to the amended claim of the Mechanics Loan & Trust Company was signed by 90 per cent in amount of the indebtedness of the said bankrupt for the reason that said alleged contract never became operative by reason of the failure to secure the signatures of 90 per cent in amount of said creditors and erred in refusing to hold that the Referee committed error in making such finding.

#### XVIII.

The Court erred in not holding and deciding that the said trust agreement was and is invalid.

#### XIX.

The Court erred in not sustaining each and every exception and objection made and contained in the petition of these petitioners and other creditors for the review of the report of the Referee made on the 28th day of May, 1917, which said petition was filed June 7th, 1917.

#### XX.

The Court erred in confirming the report and order of the Referee which it.....

#### XXI.

The Court erred in failing and refusing to specifically or at all sustain the first ground of error

assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being subnumbered therein as "a".

XXII.

The Court erred in failing and refusing to specifically or at all sustain the second ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being subnumbered therein as "b".

XXIII.

The Court erred in failing and refusing to specifically or at all sustain the third ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being subnumbered therein as "c".

XXIV.

The Court erred in failing and refusing to specifically or at all sustain the fourth ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being subnumbered therein as "d".

XXV.

The Court erred in failing and refusing to specifically or at all sustain the fifth ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being subnumbered therein as "e".

## XXVI.

The Court erred in failing and refusing to specifically or at all sustain the sixth ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being subnumbered therein as "f".

## XXVII.

The Court erred in failing and refusing to specifically or at all sustain the seventh ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being subnumbered therein as "g".

## XXVIII.

The Court erred in failing and refusing to specifically or at all sustain the eighth ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being subnumbered therein as "h".

## XXIX.

The Court erred in failing and refusing to specifically or at all sustain the ninth ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being subnumbered therein as "i".

## XXX.

The Court erred in failing and refusing to spe-



cifically or at all sustain the tenth ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being subnumbered therein as "j".

XXXI.

The Court erred in failing and refusing to specifically or at all sustain the eleventh ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being subnumbered therein as "k".

XXXII.

The Court erred in failing and refusing to specifically or at all sustain the twelfth ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being subnumbered therein as "l".

XXXIII.

The Court erred in failing and refusing to specifically or at all sustain the thirteenth ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being subnumbered therein as "m".

XXXIV.

The Court erred in failing and refusing to specifically or at all sustain the fourteenth ground of error assigned by these petitioners in their petition for review upon which the District Court passed in

rendering its said decision, said ground being sub-numbered therein as "n".

### XXXV.

The Court erred in failing and refusing to specifically or at all sustain the fifteenth ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being subnumbered therein as "o".

### XXXVI.

The Court erred in failing and refusing to specifically or at all sustain the sixteenth ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being sub-numbered therein as "p".

### XXXVII.

The Court erred in failing and refusing to specifically or at all sustain the seventeenth ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being sub-numbered therein as "q".

### XXXVIII.

The Court erred in failing and refusing to specifically or at all sustain the eighteenth ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being subnumbered therein as "r".

XXXIX.

The Court erred in failing and refusing to specifically or at all sustain the nineteenth ground of error assigned by these petitioners in their petition for review upon which the District Court passed in rendering its said decision, said ground being sub-numbered therein as "s".

XL.

The said Court erred in refusing to incorporate in its said order and decree upon review paragraph "I" of the Findings of Fact requested by these petitioners to be made and entered.

XLI.

The Court erred in refusing to adopt paragraph "II" of the Findings of Fact requested by these petitioners to be made and entered.

XLII.

The Court erred in refusing to adopt paragraph "III" of the Findings of Fact requested by these petitioners to be made and entered.

XLIII.

The Court erred in refusing to adopt paragraph "IV" of the Findings of Fact requested by these petitioners to be made and entered.

XLIV.

The Court erred in refusing to adopt paragraph "V" of the Findings of Fact requested by these petitioners to be made and entered.

XLV.

The Court erred in refusing to adopt paragraph

“VI” of the Findings of Fact requested by these petitioners to be made and entered.

XLVI.

The Court erred in refusing to adopt paragraph “VII” of the Findings of Fact requested by these petitioners to be made and entered.

XLVII.

The Court erred in refusing to adopt paragraph “VIII” of the Findings of Fact requested by these petitioners to be made and entered.

XLVIII.

The Court erred in refusing to adopt paragraph “IX” of the Findings of Fact requested by these petitioners to be made and entered.

XLIX.

The Court erred in refusing to adopt paragraph “X” of the Findings of Fact requested by these petitioners to be made and entered.

L.

The Court erred in refusing to adopt paragraph “XI” of the Findings of Fact requested by these petitioners to be made and entered.

LI.

The Court erred in refusing to adopt, make and enter paragraph ‘I’ of the Proposed Conclusions of Law, requested by these petitioners.

LII.

The Court erred in refusing to adopt, make and enter paragraph “II” of the Proposed Conclusions of Law, requested by these petitioners.

LIII.

The Court erred in refusing to adopt, make and

enter paragraph "III" of the Proposed Conclusions of Law, requested by these petitioners.

LIV.

The Court erred in refusing to sign the Proposed Order of Decree requested by these petitioners.

LV.

The Court erred in confirming the order entered May 28th, 1917, wherein the Referee in Bankruptcy allowed the amended proof of claim of the Mechanics Loan & Trust Company and the petition of the Exchange National Bank of Spokane, Washington.

WHEREFORE, these petitioners, W. A. Armstrong, Trustee in Bankruptcy, Merrill Cox & Company, I. F. Searle, and Minnie A. Gibbs prays that the decrees and orders of the United States District Court for the District of Idaho, Northern Division, appealed from herein, be reversed and the said cause be remanded with instructions to the said District Court to sustain each and all of the assignments of error and grounds set forth for review in the petition for review filed herein by these petitioners and other creditors of date June 7th, 1917; that the claim of the Mechanics Loan & Trust Company filed herein be disallowed and ordered disallowed and the petition of the Exchange National Bank of Spokane be ordered dismissed and that the said proceedings and the said orders and decrees be corrected and made to conform to the facts as produced at the trial and the law as may be announced by this Court and that these petitioners have any other and further relief that this Honorable Court may deem meet

and equitable, and consistent with the record herein.

ROBERT WEINSTEIN,

Attorney for W. A. Armstrong, Trustee in  
Bankruptcy.

ELMER H. ADAMS, HARRY L. COHN,  
ADAMS, CREWS, BOBB & WESCOTT,

Attorneys for Merrill Cox & Company.

REESE H. VOORHEES &

H. W. CANFIELD,

Attorneys for I. F. Searle and Minnie A. Gibbs.

Due service of the within Assignment of Error  
acknowledged and a true copy received this 7th day  
of August, 1917.

POST, RUSSELL, CAREY & HIGGINS,

Attorneys for Mechanics Loan & Trust Company  
and the Exchange National Bank of Spokane.

Endorsed: Filed Aug. 9, 1917. W. D. McReyn-  
olds, Clerk.

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(Title of Court and Cause.)

PRAECIPE.

To the Clerk of the Above Court:

You will please prepare transcript on the above  
entitled cause in the matter of the allowance of  
the claim of the Mechanics Loan & Trust Company  
and the Exchange National Bank of Spokane, and  
include therein:

1. Petition for supervision and review.
2. Bond.
3. Petition and order allowing claim.
4. Exceptions.
5. Proposed findings, order and refusal of court.



6. Assignments of error.
7. Report and order of referee allowing claim.
8. Petition for review.
9. Opinion of the District Court directing order allowing claim.
10. Order allowing claim Mechanics Loan & Trust Company.
11. Amended proof of claim Mechanics Loan & Trust Company.
12. Trustee's objections to allowance of claim, Mechanics Loan & Trust Company.
13. Creditors objections to allowance of claim, Mechanics Loan & Trust Company.
14. Petition of Exchange National Bank.
15. Motion to strike petition of Exchange National Bank.
- 15 $\frac{1}{2}$ . Order affirming referee's order allowing claim.
16. Answer to petition of the Exchange National Bank.
17. Citation.
18. Order extending time for filing transcript to September 12th, 1917.
19. Order extending time for filing transcript to October 12th, 1917.
20. Order extending time for filing transcript to November 12th, 1917.
21. Order extending time for filing transcript to December 12th, 1917.
22. Order extending time for filing praecipe to September 12th, 1917.

23. Order extending time for filing praecipe to October 12th, 1917.

24. Order extending time for filing praecipe to November 12th, 1917.

25. Order extending time for filing praecipe to December 12th, 1917.

26. Narrative form of testimony and bill of exceptions, including all amendments as it shall finally be allowed by the court.

MERRILL COX & COMPANY,

By Harry L. Cohn & Elmer H. Adams,  
Their Attorneys.

MINNIE A. GIBBS and I. F. SEARLE,

By Reese H. Voorhees and H. W. Canfield,  
Their Attorneys.

Filed Dec. 24, 1917. W. D. McReynolds, Clerk.

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*In the District Court of the United States for the  
District of Idaho, Northern Division.*

IN THE MATTER OF STACK-GIBBS LUMBER  
COMPANY, a Corporation,

*Bankrupt.*

IN THE CONSOLIDATED MATTER OF THE  
CLAIM OF MECHANICS LOAN & TRUST  
COMPANY, AND THE PETITION OF EX-  
CHANGE NATIONAL BANK OF SPOKANE,  
WASHINGTON.

*Citation.*

United States of America,—ss.

The President of the United States to Mechanics  
Loan & Trust Company, a corporation, and Exchange

National Bank of Spokane, Washington, a corporation, Greeting:

You, and each of you, are hereby notified that in the above entitled action in the District Court of the United States for the District of Idaho, Northern Division, an appeal has been allowed to I. F. Searle, Minnie A. Gibbs and Merrill Cox & Company, creditors of the above named bankrupt therein, to the Circuit Court of Appeals of the United States for the Ninth Circuit, and you are hereby cited and admonished to appear in the United States Circuit Court of Appeals for the Ninth Circuit in the City of San Francisco, State of California, on the 12th day of September, 1917, pursuant to an appeal duly obtained and filed in the clerk's office of the District Court of the United States for the District of Idaho, Northern Division, wherein you, and each of you, are appellees and the said I. F. Searle, Minnie A. Gibbs and Merrill Cox & Company are the appellants, and show cause, if any there be, why the order and decree in said appeal mentioned should not be reversed and corrected, and why speedy justice should not be done to the parties in that behalf, and to do and receive that which may pertain to justice to be done in the premises.

WITNESS the Honorable Frank S. Dietrich, United States Judge for the District of Idaho, at Boise, Idaho, on the 13th day of August, in the year of our Lord one thousand nine hundred and seventeen.

FRANK S. DIETRICH,

United States District Judge.

Filed Aug. 13, 1917. W. D. McReynolds, Clerk.

## RETURN TO RECORD.

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

(Seal) W. D. McREYNOLDS,  
Clerk.

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(Title of Court and Cause.)

## CLERK'S CERTIFICATE.

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 390, inclusive, to be full, true and correct copies of the pleadings and proceedings in the above entitled matter, and that the same, together constitute the transcript of record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, as requested by the praecipe for such transcript, (except the omission of orders extending time, which orders have been filed in the office of the Clerk of the U. S. Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of \$586.15, and that the same has been paid by the appellants.

Witness my hand and seal of said court this 2nd day of January, 1918.

(Seal) W. D. McREYNOLDS,  
Clerk.